HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Thursday, May 16, 2013
83rd Legislature, Number 75
The House convenes at 10 a.m.

Twenty-four bills and two joint resolutions are on the daily calendar for second-reading consideration today. They are analyzed in today's *Daily Floor Report* and are listed on the following page.

Bill Callegari
Chairman
83(R) – 75

HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Thursday, May 16, 2013
83rd Legislature, Number 75

SUBJECT: Continuation and functions of the State Commission on Judicial Conduct

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Lewis, Farrar, Farney, Hernandez Luna, Raymond, S. Thompson

0 nays

3 absent — Gooden, Hunter, K. King

SENATE VOTE: On final passage, April 23 — 31-0

WITNESSES: (*On companion bill, HB 1885*)
For — Randall Kelton, Rule of law radio listenership; Julie Oliver, Texas Coalition on Lawyer Accountability; Pamela Kinney

Against — None

On — Tom Cunningham, Judicial Conduct Commission; Erick Fajardo, Sunset Advisory Commission; Ken Magnuson; Seana Willing, State Commission on Judicial Conduct; (*Registered, but did not testify*: Ken Levine, Sunset Advisory Commission)

BACKGROUND: The State Commission on Judicial Conduct (commission) was created in 1965 and is responsible for ensuring that judges and justices comply with the standards of conduct established in the Texas Constitution and by the Supreme Court. Any changes to the commission's duties or responsibilities require a voter-approved constitutional amendment. The commission's duties are to:

- investigate complaints against Texas judges;
- issue private and public sanctions to judges who have committed judicial misconduct; and
- make recommendations for the removal or retirement of a judge based on misconduct or incapacity.

The 13-member commission is comprised of six judges appointed by the

Supreme Court of Texas, representing appellate, district, county court at law, constitutional county, justice of the peace, and municipal courts. There are also two non-judge attorneys appointed by the State Bar of Texas, and five citizen members appointed by the governor, who are neither attorneys nor judges.

DIGEST:

SB 209 would continue the State Commission on Judicial Conduct (commission) until 2019 and would review the commission every 12 years. The commission would be an agency of the state government's judicial branch and would administer judicial discipline but not have the power or authority of a court. The commission's annual report would be submitted electronically.

Public meetings. The commission would have to hold annual public hearings for input on the commission's mission and operations. The secretary of state would be notified about a hearing in order to publicly post an online meeting notice at least seven days before the hearing.

Confidentiality. When the Sunset Advisory Commission was conducting a review, the commission would have to provide the Sunset Advisory Commission with access to any confidential documents, records, meetings, proceedings, and testimonies that were deemed necessary to conduct a thorough evaluation. The commission would not be authorized under confidentiality provisions to withhold access to these documents. The Sunset Advisory Commission would have to maintain any necessary confidentiality as part of a review. The commission would not violate attorney-client privilege or any other form of privilege by providing the Sunset Advisory Commission with otherwise confidential documents.

Complaints and disciplinary actions. If a complaint were dismissed, the commission would have to provide a plain, easily understandable explanation about why a judge's action did not constitute judicial misconduct.

After a formal proceeding, the commission could issue a public sanction, in addition to issuing a public censure and requiring the removal or retirement of a judge. After a formal proceeding, a judge could appeal the decision in the manner as a censure: the court of review would need to evaluate the proceedings and allow the presentation of new evidence. After an informal proceeding, the appeal of a sanction would be by trial de novo, but a judge would not be entitled to a trial by jury.

Internal review. The commission would have to periodically assess the efficiency of its operations and implement any necessary improvements. It would review its procedural rules adopted by the Texas Supreme Court and report any necessary rule revisions. The commission would have to conduct an initial assessment of its operations and procedural rules, and report any necessary revisions to the Texas Supreme Court by December 31, 2013.

The bill would take effect on September 1, 2013, except that the provisions involving sanctions require a voter-approved constitutional amendment. If that amendment is not approved, those provisions would have no effect.

SUPPORTERS SAY:

SB 209 would improve the efficacy and oversight of the State Commission on Judicial Conduct. If the constitutional amendment proposed in SJR 42 were approved by voters, the commission could use its full range of disciplinary actions after a formal proceeding. This would enhance the commission's ability to discipline judges and deter judicial misconduct.

SB 209 would improve oversight of the commission by requiring that the Sunset Advisory Commission have full access to confidential documents and records. By allowing the Sunset Advisory Commission to thoroughly review the commission's proceedings, the bill would increase transparency and ensure that judges were being held accountable for any misconduct.

The bill would not undermine the commission's immunity. The commission is statutorily granted absolute and unqualified immunity, and the language of the bill would not change that protection. Moreover, it is not the legislative intent to limit the commission's immunity.

The bill would eliminate confusion by clarifying that the commission did not have the power of a court. The commission was designed to be a regulatory agency serving a quasi-judicial function, similar to the administrative decisions of other agencies. This clarification would not limit the commission's disciplinary influence because it would not increase the chance that a judge would appeal the decision to a court. Moreover, other provisions of the bill strengthen the commission's ability to penalize judicial misconduct.

OPPONENTS SAY:

SB 209 could undermine the commission's immunity by changing the nature of the agency. This would limit its ability to effectively discipline judges and leave the members of the commission vulnerable to civil liability. In addition to impeding the commission's fundamental duties, it would also make it harder to find people willing to serve on the commission.

The commission should have the power of a court. This authority would ensure that judges abided by and respected the commission's decisions. Without this power, the commission would have limited disciplinary influence.

OTHER OPPONENTS SAY:

SB 209 should do more to enhance the ability of the commission to discipline judges. The commission's process protects judges from public scrutiny and often fails to hold them accountable for judicial misconduct. The resolution should authorize the commission to bring criminal charges, if appropriate. It should also include stronger reporting requirements to reinforce the commission's authority.

NOTES:

SB 209 is the enabling legislation for by SJR 42 by Huffman, which would authorize a ballot measure proposing a constitutional amendment to allow the commission to issue any type of disciplinary order following a formal proceeding.

SUBJECT: Charter school expansion and accountability

COMMITTEE: Public Education — committee substitute recommended

VOTE: 7 ayes — Aycock, Allen, Deshotel, Farney, Huberty, Ratliff, Villarreal

0 nays

4 absent — J. Davis, Dutton, K. King, J. Rodriguez

SENATE VOTE: On final passage, April 11 — 30-1 (Nichols)

WITNESSES: For — Traci Berry, Goodwill Industries of Central Texas; David Dunn, Texas Charter Schools Association; Mike Feinberg, KIPP Houston Public Schools; Terry Ford, Neighbors United for Quality Education dba East Dallas Community Schools; Christopher Garcia, Uplift Education; James Golsan, Texas Public Policy Foundation; Steve Munisteri, Republican Party of Texas; Charles Pulliam, Life School of Dallas; Larkin Tackett, IDEA Public Schools; Richard Trabulsi, Texans for Education Reform; Peggy Venable, Americans for Prosperity-Texas; Kathleen Zimmermann, NYOS Charter School; (*Registered, but did not testify:* David Anthony, Raise Your Hand Texas; Ellen Arnold, Texas PTA; Andrew Erben, Texas Institute for Education Reform; Garza Brown; Eric Glenn, Texas Charter Schools Association; Terri Hall; Bill Hammond, Texas Association of Business; Patricia V. Hayes, Stand for Children Texas; David Maddox, Kids First; Annie Mahoney, Texas Conservative Coalition; Dustin Matocha, Texans for Fiscal Responsibility; Thomas Mayes, Beatrice Mayes Institute Charter School; Jonathan Saenz, Texas Values; Michelle Smith, Concerned Women for America; Todd Webster, Spring Branch ISD; Justin Yancy, Texas Business Leadership Council)

Against — Yannis Banks, Texas NAACP; Monty Exter, The Association of Texas Professional Educators; Lonnie Hollingsworth, Texas Classroom Teachers Association; Zenobia Joseph; Ed Martin, Texas State Teachers Association; Ted Melina Raab, Texas American Federation of Teachers; Columba Wilson; (*Registered, but did not testify:* Portia Bosse, Texas State Teachers Association; Anne Roussos, League of Women Voters of Texas; Chandra Villanueva, Center for Public Policy Priorities; Marjorie

Wood; Herb Youngblood, Texas Association of Community Schools)

On — David Anderson, Texas Education Agency; MerryLynn Gerstenschlager, Texas Eagle Forum; Parc Smith, American YouthWorks; (*Registered, but did not testify:* Lisa Dawn-Fisher, Texas Education Agency)

BACKGROUND:

The 74th Legislature in 1995 enacted SB 1 by Ratliff. Among its many provisions, this revision of the Texas Education Code established a new type of public school known as a charter school. Charter schools are subject to fewer state laws than other public schools, but like school districts, charter schools are monitored and accredited under the statewide testing and accountability system.

According to the Texas Education Code, the purposes of charter schools are to:

- improve student learning;
- increase the choice of learning opportunities within the public school system;
- create professional opportunities that will attract new teachers to the public school system;
- establish a new form of accountability for public schools; and
- encourage different and innovative learning methods.

Four classes of charters are authorized by the Texas Education Code. They are home-rule school district charters; campus or campus program charters; open-enrollment charters; and college or university charters. There are currently no schools operating under home-rule school district charters. There are 74 campus charters operated by 15 school districts and three operated by colleges or universities. Most of the charter schools in Texas operate under open-enrollment charters, which are granted by the State Board of Education (SBOE).

The SBOE may grant up to 215 open-enrollment charters, although some charter holders may operate more than one campus. There currently are 552 open-enrollment charter school campuses.

The term for an open-enrollment charter is not set out in statute; however, the current practice has been to grant open-enrollment charters for five-year periods and then to renew the charters for 10-year periods.

DIGEST:

CSSB 2 would increase the charter school cap while maintaining the State Board of Education (SBOE) as the charter school authorizer, with new veto authority for the commissioner of education. The bill would establish new requirements for reviewing charter applicants, new accountability measures, and new procedures for renewing and revoking charters.

Facilities. A district that intended to sell or lease unused facilities would be required to give charter schools the first opportunity to purchase, lease or use the facility. A district would not have to accept a charter school's offer. Additionally, a district could not require a charter school it had contracted with to provide educational services to rent or buy a facility.

Applications. The cap on the number of open-enrollment charter schools would increase by 10 each fiscal year beginning September 1, 2014, for a total of 275 by September 1, 2019. The initial term for a new charter would be set at five years.

The SBOE would be directed to give priority to applications that proposed to locate a charter school in the attendance zone of a district campus assigned an unacceptable performance rating for the preceding two school years.

The SBOE would be required to thoroughly investigate and evaluate a charter school applicant to determine that the applicant was likely to operate a school of high quality and:

- had not in the preceding 10 years had a charter issued by Texas or another state surrendered, revoked or denied renewal; or
- was not a corporate affiliate or substantially related to such an entity.

The commissioner would have veto authority over any charter the SBOE granted within 90 days. The SBOE would be prohibited from granting more than one charter to a holder but could consolidate multiple charters with the written consent of current charter holders.

The bill would codify expedited rules allowing expansion campuses for high-performing charters that had at least half of their students in grades 3-11. Unless the commissioner disapproved within 60 days after receiving notice, a charter holder could open a new campus location.

The bill would allow the SBOE to grant charters to affiliates of out-of-state entities that met high performance standards.

Renewals. After the initial charter term of five years had expired, CSSB 2 would establish renewal periods of 10 years and three renewal processes — expedited, discretionary, and expiration.

An expedited process allowing automatic renewal 30 days after written notice would be available for charter holders that had:

- the highest or second-highest rating in the accountability system for the preceding three years;
- a satisfactory or better financial rating for the preceding three years; and
- no low-performing campuses that the charter holder had not closed in the three preceding years.

For charters not meeting expedited criteria, the commissioner would use the discretionary process, which would evaluate charter schools using accountability rates and performance framework criteria. For purposes of the discretionary process, the commissioner would designate a charter as a dropout recovery school if at least half the students enrolled at the school were at least 17 years old and registered in the alternative education accountability system.

The bill would establish an appeal procedure for discretionary renewal appeals to the State Office of Administrative Hearings (SOAH).

The commissioner would be required to let a charter expire if the charter holder had:

- received the lowest academic rating for any three of the five preceding years;
- received a financial accountability rating lower than satisfactory for three of the five preceding years;
- received any combination of the above ratings for three of the five preceding years; or
- had not closed any campus that held an unacceptable rating in each of the three preceding years.

An expiration decision would be final and could not be appealed.

Revocations. The bill would require the commissioner to revoke the charter or reconstitute the governing body if the insolvency of a charter holder was imminent or for the charter's failure to:

- comply with fiscal management requirements;
- protect the health and safety of students; or
- meet accountability or performance framework standards.

The bill would delete probation and modification as possible actions for charters not meeting academic or financial standards.

The commissioner would be required to revoke the charter if the charter holder:

- received an unacceptable performance rating for the three preceding school years;
- received an unsatisfactory financial accountability performance rating for the three preceding school years; or
- received any combination of the above ratings for the three preceding school years.

The commissioner would be directed to adopt an informal procedure for revoking charters or reconstituting the governing body of a charter school. The appeals process would be moved to SOAH, which could only reverse the commissioner's decision on a finding that it was arbitrary and capricious or clearly erroneous. The SOAH decision would be final.

The bill would repeal a provision that allows the holder of a charter that had been revoked to continue to operate and receive state funds for the remainder of a school year. Instead, the commissioner could manage such a school until alternative arrangements could be made for students or a different charter holder took over the school.

Accountability. The bill would specify that charter holders were subject to financial accountability and procedures for appeals. It would direct the commissioner to develop performance frameworks based on national best practices to measure charter schools under either standard accountability or alternative education accountability criteria. The commissioner would adopt the frameworks with advice from charter holders, governing body

members, and other interested persons. The performance frameworks would have to include student attrition rate as a standard.

Employment. CSSB 2 would align charter school hiring and nepotism provisions with those of other school districts by repealing language that currently exempts certain high-performing charter schools from state nepotism laws.

The bill would fix a gap in eligibility for membership in the Teacher Retirement System of Texas (TRS) for employees providing contracted services to a campus charter.

Transparency. The bill would require a charter school's governing body to post the agenda of a meeting on the school's website at least 48 hours before a meeting. It would require a charter school to post on its website the names of governing board members and the school superintendent's salary.

The bill would direct the commissioner to establish rules for charters to hold open meetings by telephone conference call or video conference. During a telephone or video conference call, a quorum of the governing body members would not have to be present at a single location, but there would have to be a location with two-way communication open to the public.

Reporting. The bill would establish an annual commissioner's report comparing the performance of charter schools to "matched traditional campuses," defined as a school district campus that has a student demographic composition similar to the charter school. The report would be required to allow the public to draw comparisons between open-enrollment charter schools, campuses or programs operating under charters granted by school districts, and matched traditional campuses.

Other. The bill would make charters schools subject to Education Code provisions on parental rights and responsibilities. Charter school students would be required to pledge allegiance to the U.S. and Texas flags and to observe a minute of silence each day.

CSSB 2 would clarify that property purchased or leased by charters with state funds was state property.

Texas Education Agency (TEA) employees assigned responsibility related to granting charters or providing oversight or monitoring would be required to participate in training by October 1, 2013.

The bill would define a specialty high school as one that enrolled students without regard to attendance zones. For the purpose of participating in league contests, the University Interscholastic League (UIL) would be required to assign a specialty high school to the conference with the largest student enrollment and to make reasonable exceptions for travel, availability of participant schools, or other criteria.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

CSSB 2 would strike an important balance between encouraging the growth of high-quality charter schools and ensuring that the commissioner of education had the necessary tools to provide effective quality control and oversight.

Charter schools in Texas today educate about 154,000 students, and there are more than 101,000 on waiting lists. Many of these are students whose traditional neighborhood schools are failing, and their educational opportunities should not be limited by their zip code.

Texas is home to many outstanding charter schools that have been able to provide a range of options for students, from college prep to dropout recovery. However, the state has outdated and ineffective laws governing charters. This has created a situation where the cap prevents new high-quality schools from forming while poor performing schools are allowed to remain open.

Expansion. Successful schools like KIPP and YES Prep are working hard to meet the demand by adding campuses, but their growth options are limited to maintain quality. IDEA Public Schools, for instance, has a child on a waitlist for every enrolled student. IDEA simply cannot grow at a rate fast enough to keep up with a waitlist ratio that high. Beyond that—one of the original intentions of the charter model was to promote innovation. Increasing the cap would allow all kinds of charter models to start schools. About 30 percent of charters are dropout recovery schools. There are also special mission schools that focus on STEM (science, technology, engineering, and mathematics), college prep, classical education, Montessori, and other models.

Facilities. The bill would promote efficient use of public resources and help charter schools improve their facilities by allowing them first refusal for mothballed school district facilities. This type of facility sharing would encourage cooperation between school districts and charter schools, which are at a distinct disadvantage compared to public schools when it comes to facilities funding. Charter schools are not allowed to levy taxes to pay for their facilities and are not eligible for programs that provide state funding to help eligible school districts with facilities costs.

Oversight. CSSB 2 would streamline expansion and renewal for quality charters and provide a clear process for closing or modifying schools that were not meeting the needs of students. It adequately would staff and train TEA employees who oversee the charter school program.

The bill would address serious regulatory flaws that the TEA Sunset reviewed identified. It would require a very strong standard for revoking a charter if a school had three consecutive years of any combination of failing academic or financial ratings. It also would authorize the commissioner to revoke an imminently insolvent charter school so it did not open without sufficient funding to complete the term.

CSSB 2 would restructure the renewal process by establishing objective financial and academic criteria that constitute high performers and low performers. High quality charters would be rewarded with a simple automatic renewal, and the charters of low performers would automatically expire if they did not meet the new standards.

Studies have shown that a charter school's first five years of operation are strongly indicative of how the school will perform over the long run, and the bill appropriately would close schools that failed to meet accountability and/or financial performance standards for three consecutive years. This would give Texas one of the strictest charter oversight laws in the nation.

The three-tiered renewal process would allow good charter schools to continue to serve students without additional bureaucratic red tape and burdensome renewal processes.

The bill would provide additional accountability for charter schools over and above the standard academic and financial accountability systems. A

new annual report would match charter schools with traditional campuses, allowing direct comparison between the two types of public schools.

The bill also would implement another Sunset recommendation by applying standard provisions on nepotism to all members of a charter holder board and employees. This could prevent conflicts of interest, morale problems, and the hiring of employees at charter schools who were not qualified.

Transparency. The bill would increase transparency of charter school governance by requiring governing boards to post meeting agendas on their websites 48 hours before a meeting. It also would require the names of the governing board and the superintendent's salary to be posted on the each school's website.

OPPONENTS SAY:

CSSB 2 would put quantity before quality when it comes to charter schools. The state should wait for quality control measures to take effect before raising the cap on the number of charters allowed to operate in Texas.

The state frees charter schools from certain restrictions, such as class-size and teacher certification requirements, in exchange for an expectation of higher performance. While many charter schools perform well, poor performance by some charter schools threatens the delivery of a quality education for their students, according to the 2012 Sunset report on TEA.

Expansion. In some districts, public schools receive less funding per student than charter schools statewide receive on average. Public schools also must follow more rules and state regulations than charters. CSSB 2 would not adequately address these funding and regulatory issues, and until the playing field is leveled and school funding addressed, there should not be any further expansion of charter schools.

There is no need to raise the cap because successful operators such as KIPP and YES Prep already can add campuses. Replication is why there are twice as many charter campuses as there are charter holders.

Oversight. Three years of poor academic or financial performance would be too long to allow bad charter schools to keep operating. The bill would increase oversight of charter schools, but that oversight would come at a cost of $900,000 for 11 employees in fiscal 2016, increasing to $1 million

for 13 employees in each subsequent year, according to the fiscal note.

OTHER OPPONENTS SAY:

CSSB 2 would not go far enough in supporting school choice and should eliminate any arbitrary cap on charter schools.

The bill's requirement that schools have half of their enrollment in grades 3-11 in order to automatically create an expansion campus could be detrimental to schools that focus on early childhood education.

The bill would not account for efforts by the charter to correct poor performance on accountability systems. One charter holder testified that his school's finances improved dramatically after receiving grant funding, but that his charter could be subject to automatic expiration based on its financial status five years go. A "human review" should be required before a charter automatically expires.

CSSB 1 should grandfather current staff from the proposed changes to nepotism rules, similar to what happened when the law was changed for traditional school district employees. Some good charter schools truly are family-run, and it would be unfair to force out employees who were performing their jobs well.

NOTES:

The Legislative Budget Board (LBB) estimated CSSB 2 would have no significant fiscal impact to general revenue related funds through fiscal 2014-15. However, the bill would result in a negative impact of $1.7 million in fiscal 2016. The costs would increase to $2.5 million in fiscal 2017 and $5.9 million in fiscal 2018. The costs would stem from the enrollment of new students in charters who are not currently served by public schools and from salaries and benefits paid to new TEA staff responsible for administration and oversight of charters.

Compared to the Senate-passed version, the committee substitute would:

- eliminate language allowing school districts to convert failing campuses to open-enrollment charter campuses;
- maintain the SBOE as the charter school authorizer and grant the commissioner veto power;
- increase the charter school cap to 275 instead of 305 and place dropout recovery charters under the cap;
- require the commissioner to give priority to charters locating in

areas served by academically unacceptable campuses;

- make alternative education accountability campuses eligible for the renewal and revocation processes;
- require governing boards to post meeting agendas on their websites 48 hours before a meeting and to post the superintendent's salary;
- allow charters to use video and teleconference for governing board meetings;
- repeal the current nepotism exemption for charter schools;
- require charter schools to comply with Education Code provisions on parent rights;
- require charters specializing in UIL contests to play in the conference with the largest enrollment;
- align district and charter employment prohibitions; and
- require charter school students daily to pledge allegiance to the U.S. and Texas flags, followed by observing a minute of silence.

SUBJECT: Proposed constitutional amendment on certain judicial discipline actions

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 9 ayes — Lewis, Farrar, Farney, Gooden, Hernandez Luna, Hunter, K. King, Raymond, S. Thompson

0 nays

SENATE VOTE: On final passage, April 23 — 31-0

WITNESSES: No public hearing

BACKGROUND: Tex. Const., Art. 5, sec. 1-a, creates the State Commission on Judicial Conduct. The commission is responsible for ensuring that Texas judges comply with standards of conduct established in the Texas Constitution and by the Supreme Court. After a formal disciplinary proceeding, the commission may issue an order of public censure.

DIGEST: SJR 42 would allow the State Commission on Judicial Conduct, after a formal proceeding, to issue an order of public admonition, warning, reprimand, censure, or requirement that a judge or justice obtain additional training or education.

The resolution would include a temporary provision expiring January 1, 2016, specifying that the constitutional amendment would take effect January 1, 2014 and would apply only to formal proceedings commenced on or after that date.

The proposal would be presented to the voters at an election on Tuesday, November 5, 2013. The ballot proposal would read: "The constitutional amendment relating to expanding the types of sanctions that may be assessed against a judge or justice following a formal proceeding instituted by the State Commission on Judicial Conduct."

SUPPORTERS SAY: SJR 42 would allow the commission to use its full range of disciplinary actions after a formal proceeding. This would enhance the commission's ability to discipline judges and deter judicial misconduct.

OPPONENTS SAY:

SJR 42 should further enhance the commission's ability to discipline judges. The commission's current process protects judges from public scrutiny and often fails to hold them accountable for judicial misconduct. It should include stronger measures to reinforce the commission's authority.

NOTES:

SB 209 by Huffman, the enabling legislation for SJR 42, would statutorily enable the commission to issue any type of disciplinary order following a formal proceeding.

SUBJECT: Constitutional amendment to allow reverse mortgages for purchase

COMMITTEE: Investments and Financial Services — favorable, without amendment

VOTE: 4 ayes — Villarreal, Flynn, Anderson, Burkett

0 nays — None

3 absent — Laubenberg, Longoria, Phillips

SENATE VOTE: On final passage, March 12 — 31-0

WITNESSES: For — Andrew Cates, Texas Association of Realtors; John Fleming, Texas Mortgage Bankers Association; W. Scott Norman, Sente Reverse Mortgage; Emily Rickers, Alliance for Texas Families; Sandy Silver (*Registered but did not testify*: Brandon Aghamalian, Texas Land Title Association; Celeste Embrey, Texas Bankers Association; Daniel Gonzalez, Texas Association of Realtors; Scott Norman, Texas Association of Builders; Joe Sanches, AARP; Steve Scurlock, Independent Bankers Association of Texas; Chelsey Thomas, Texas Association of Builders)

Against — None

On — None

BACKGROUND: The U.S. Department of Housing and Urban Development (HUD) oversees a Home Equity Conversion Mortgage (HECM) for Purchase program, which allows seniors, age 62 or older, to purchase a new principal residence using loan proceeds from the reverse mortgage.

The program was designed to allow seniors to purchase a new principal residence and obtain a reverse mortgage within a single transaction. The program was also designed to enable senior homeowners to relocate to other areas to be closer to family members or downsize to homes that meet their physical needs, such as with handrails, single-level properties, ramps, wider doorways, or other needs.

DIGEST:

SJR 18 would propose an amendment to the Texas Constitution to allow a reverse mortgage for the purchase of a homestead property. The borrower would have to occupy the homestead property as a principal residence within a specified time after the reverse mortgage closing.

The proposed amendment would require a prospective reverse mortgage borrower and the borrower's spouse complete financial counseling before the reverse mortgage closing.

It also would require a lender to provide to a prospective borrower a disclosure with a detailed description of borrower behavior that could lead to foreclosure, including among other things, the borrower requirement to pay property taxes. Both the lender and borrower would have to sign the disclosure.

The proposal would be presented to the voters at an election on Tuesday, November 5, 2013. The ballot proposal would read: "The constitutional amendment to authorize the making of a reverse mortgage loan for the purchase of homestead property and to amend lender disclosures and other requirements in connection with a reverse mortgage loan."

SUPPORTERS SAY:

SJR 18 would increase seniors' flexibility to meet their financial needs by authorizing reverse mortgages for purchase and would increase financial disclosures and counseling requirements to borrowers considering a traditional reverse mortgage or reverse mortgage for purchase.

Currently, traditional home equity conversion mortgages, which enable homeowners to access the equity accumulated in their homes, are permitted, but the Texas Constitution does not expressly authorize reverse mortgages for purchase. Texas is the only state in which a homeowner may not use the reverse mortgage for purchase transaction because the Constitution does not allow it.

Many seniors would like to sell their current home to downsize to a more suitable home, relocate to a region with a lower cost of living, or move closer to family or medical care. In Texas, seniors must perform separate transactions to purchase a new home with a mortgage and then take out a reverse mortgage on the home's equity, which require separate closing costs. SJR 18 would allow Texas seniors to combine those steps into a single transaction, thereby saving money on closing costs and allowing them to move into the new home without a mortgage payment.

SJR 18 also would ensure that borrowers considering a traditional reverse mortgage or a reverse mortgage for purchase receive a detailed disclosure that described the borrower's obligations upon closing and ways in which foreclosure could occur.

OPPONENTS SAY:

No apparent opposition.

NOTES:

The cost to the state for the publication of the resolution would be $108,021, according to the Legislative Budget Board.

SUBJECT: Providing credit by examination for public school students

COMMITTEE: Public Education — committee substitute recommended

VOTE: 10 ayes — Aycock, Allen, J. Davis, Deshotel, Dutton, Farney, Huberty, K. King, Ratliff, J. Rodriguez

0 nays

1 absent — Villarreal

SENATE VOTE: On final passage, April 15, 2013 — 31-0

WITNESSES: (*On House companion bill, HB 2694*)
For — Anthony Holm, Texans for Education Reform; (*Registered, but did not testify*: Bill Hammond, Texas Association of Business; Adam Jones, Texans for Education Reform; Drew Scheberle, Greater Austin Chamber of Commerce; Theresa Trevino; Paula Trietsch Chaney; Peggy Venable, Americans for Prosperity; Allen Weeks, Save Texas Schools; Justin Yancy, Texas Business Leadership Council)

Against — (*Registered, but did not testify*: Maria Whitsett, Texas School Alliance)

On — (*Registered, but did not testify*: David Anderson, Texas Education Agency)

BACKGROUND: According to State Board of Education (SBOE) rules, school districts must offer examinations for acceleration at every grade level and for every subject area in grades 1-12.

At the option of the local school district, students in grades 6-12 who have not received credit but have received previous instruction in a subject area may earn credit for the subject by passing an exam.

Students in grades 1-5 who have not received instruction at the grade level tested must be promoted one grade if they achieve a minimum score on the grade-level exam in each of the following subject areas: language arts,

mathematics, science, and social studies. School district and parent approval also is required.

DIGEST:

CSSB 1365 would change Education Code provisions for students who sought to be promoted or obtain high school course credit by passing examinations.

The bill would specify that requirements of minimum attendance for class credit did not apply to students who received credit by examination.

It would require each district to select, if available, at least four SBOE-approved examinations for each subject. The exams would have to include advanced placement (AP) exams administered by the College Board and Educational Testing Service, and exams administered through the College-Level Examination Program (CLEP).

The bill would lower the passing standard from the 90th to the 80th percentile for students in primary grades to be promoted and for students in grades 6-12 to receive credit. Students who received credit would not be required to take an end-of-course assessment.

Students in grades 6-12 could receive credit if they scored a three or higher on a SBOE-approved AP exam administered by the College Board or Educational Testing Service or a scaled score of 60 or higher on a SBOE-approved CLEP exam.

School districts would be required to offer credit by exam within 30 days of a written request from a student or a student's parent or guardian if the exam was offered electronically and at least three times per year if the exam was not offered electronically. Electronic exams could not be administered to a student more than two times each year.

A student could not attempt more than two times to receive credit for a particular subject. If a student failed to test out of a class before the beginning of the school year in which the student ordinarily would be enrolled in that class, the student would have to complete the course.

The bill would take immediate effect if passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013 and would apply beginning with the 2013-14 school year.

SUPPORTERS SAY:

CSSB 1365 would give students more flexibility in shaping their education by allowing them to demonstrate that they were ready to be promoted to a higher grade or receive credit for a course. This would prevent these high achievers from wasting valuable seat time in a grade or course.

While many legislative efforts focus on helping struggling students, this is one bill that could help advanced students accelerate their learning and get an early start on college. Credit by exam also allows high school students in rural districts with limited course offerings to have access to credits that they might not otherwise be able to obtain.

The bill would make it easier for students to take an exam by requiring the district to respond within 30 days of a request when electronic versions of the tests were available.

The University of Texas, Texas Tech University, and many universities around the nation offer versions of CLEP exams, so it should not be difficult for districts to find four exam versions in any subject. Different tests measure different learning styles so students would have more options to take an appropriate exam.

An 80th percentile passing standard, while lower than the 90th percentile now required, still would be a high standard and an indication that a student truly had mastered a subject. Many top colleges and universities require a 4 score on an AP exam before awarding credit, so a 3 score would be appropriate to award high-school credit.

OPPONENTS SAY:

CSSB 1365 could drive up costs to school districts by requiring them to pay for four different versions of each test. The Legislative Budget Board fiscal note estimates that there likely would be additional administrative costs to districts to administer more exams at more frequent intervals.

Lowering the passing standards for grade promotion and course credit could prompt some students to think credit by exam would be an easy out when it might not be the best option for that student’s educational development.

On the other hand, requiring a student to score a 3 or higher on an AP exam to receive high school credit may be too stringent. Many colleges

award college credit for a score of 3.

Allowing students credit by exam for AP courses would be no substitute for a student not having access to AP courses at their local high school.

The bill's 30-day deadline to honor requests for electronically available tests could put new demands on counselors' already demanding duties. It also assumes that electronic tests would be available on demand, and that might not be true for all.

NOTES:

The House companion bill, HB 2694, was reported favorably as substituted by the Senate Education Committee on May 14 and recommended for the Local and Uncontested Calendar.

SUBJECT: Admitting evidence of other offenses in trials of certain child sex crimes

COMMITTEE: Criminal Procedure Reform, Select — favorable, without amendment

VOTE: 3 ayes — Riddle, Carter, Moody

0 nays

2 absent — Herrero, Parker

SENATE VOTE: On final passage, March 26 — 31-0

WITNESSES: (*On companion bill, HB 330:*)
For — Jason Sabo, Children at Risk; Justin Wood, Harris County District Attorney's Office; (*Registered, but did not testify*: Jessica Anderson, Houston Police Department; Lon Craft, Texas Municipal Police Association; Kenda Culpepper, Rockwall County Criminal District Attorney; Lauren Donder, Children's Advocacy Centers of Texas; Clifford Herberg, Bexar County Criminal District Attorney's Office; James Jones, San Antonio Police Department; Marshall Kenderdine, Texas Pediatric Society; Diana Martinez, TexProtects, The Texas Association for the Protection of Children; Corinne Smith, North Texas Citizens Lobby; Eddie Solis, City of Abilene; Glenn Stockard, Texas Association Against Sexual Assault; Barbara Harless)

Against — Kristin Etter and David Gonzalez, Texas Criminal Defense Lawyers Association; (*Registered, but did not testify:* Chris Howe)

On — Shannon Edmonds, Texas District and County Attorneys Association

BACKGROUND: Code of Criminal Procedure, art. 38.37 allows evidence of prior crimes, wrongs, or acts committed by a defendant to be admitted as evidence in a criminal trial only under limited circumstances. Allowing evidence and information about such "extraneous offenses" is permitted in trials for certain sex and assaultive offenses in which the same child is a victim in both the offense being tried and the prior offenses.

The evidence of other crimes is admitted "for its bearing on relevant matters," including the state of mind of the defendant and the child and the previous and subsequent relationship between the defendant and the child. This evidence is admitted notwithstanding rules 404 and 405 of the Texas Rules of Evidence, which generally prohibit the admissibility of evidence of other crimes.

Admissibility of this evidence applies in cases in which there is a child victim younger than 17 years old and the offense, attempted offense, or conspiracy to commit an offense is:

- a sexual offense listed in Penal Code, ch. 21;
- an assaultive offense listed in Penal Code, ch. 22;or
- prohibited sexual conduct.

Admissibility of this evidence also applies in cases with victims younger than 18 years old if the offense, attempted offense, or conspiracy to commit an offense is:

- sexual performance by a child;
- child sex trafficking; or
- compelling prostitution of a child.

Following a defendant's timely request, a prosecutor must give the defendant notice of the prosecutor's intent to introduce this type of evidence.

Under Texas Rules of Evidence, rule 404(b), evidence of other crimes, wrongs, or acts is not admissible to show that an action conforms with a person's character. However, evidence of other crimes may be admissible for other purposes, such as proof of a motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of a mistake or accident. Upon timely request by a defendant, reasonable notice must be given before a trial of a prosecutor's intent to introduce this evidence.

Under Texas Rules of Evidence 405(b), in cases in which a person's character is an essential element of a charge, proof can be made of specific instances of the person's character.

DIGEST:

SB 12 would allow evidence that a person had committed certain previous criminal offenses with any child victim to be admitted into trials for

certain offenses with child victims. This evidence could be admitted for the bearing it would have on relevant matters, including the character of the defendant and actions that conform with the defendant's character.

Evidence that a defendant committed a previous offense listed in SB 12 could be admitted into trials for the same offenses listed in the bill. This would apply to trials for, attempts to commit, and conspiracy to commit the following offenses:

- certain sex and labor trafficking offenses against children;
- continuous sexual abuse of a young child;
- indecency with a child;
- sexual assault of a child;
- aggravated sexual assault of a child;
- online solicitation of a minor;
- sexual performance by a child; and
- possession or promotion of child pornography.

Before admitting this type of evidence, a judge would have to conduct a hearing out of the jury's presence to determine that the evidence likely to be admitted would be adequate to support a jury finding beyond a reasonable doubt that the defendant committed the other offenses.

Prosecutors would have to notify defendants at least 30 days before the trial date of their intention to introduce this type of evidence. The requirement for at least 30 days' notice also would be applied to current provisions allowing evidence of previous offenses against the same child to be admitted in trials for certain offenses with child victims.

The bill would take effect September 1, 2013, and would apply to the admissibility of evidence in proceedings that began on or after that date.

SUPPORTERS SAY:

SB 12 would give prosecutors additional resources to prosecute sex crimes committed against children. This change is warranted by the nature of these heinous crimes and the importance of protecting children from sexual predators. The bill would continue the work of the Legislature in Jessica's Law and numerous other bills enacted to address these horrific offenses against children.

Prosecuting sex crimes committed against children can be difficult due to the physical and emotional trauma suffered by the victims. This can result

in long delays in reporting these crimes during which physical evidence can deteriorate or be destroyed. Often the only evidence at a trial may be the testimony of the traumatized child. Children often are targeted for these crimes, in part because they tend to make poor witnesses.

In the cases of some offenders, this leaves the jury without a full picture of the abuse until other information can be presented during the punishment phase of the trial. This incomplete picture of a defendant and a crime can unfairly affect the strength of the prosecution of a case, especially when the defendant is a person with more authority or power than a victim, such as a child. For example, jurors have reported that they believed a child's testimony but needed more evidence to make a conviction.

Allowing judges to decide whether to admit the type of evidence listed in SB 12 could help overcome the difficulties inherent with child victims of sex crimes. Prosecutors may be aware of the defendant's previous convictions or of other children who have accused the defendant of a crime. The bill would allow courts to see the full picture of the defendant.

SB 12 would create a narrowly drawn exception to requirements governing the admissibility of evidence about offenses that occurred prior to the current crime being tried. The bill would be limited only to cases with child victims. The exception would apply only in trials for the serious sex and trafficking offenses listed in SB 12 and would allow other evidence only about the same offenses. This limited applicability would be a natural extension of current law allowing some evidence of prior crimes that would respect evidence rules and balancing the rights of defendants and victims.

There would be no constitutional violations of rights in admitting the kind of evidence described by SB 12 because it would undergo the proper scrutiny. The Federal Rules of Evidence and 11 other states allow for the admissibility of this type of evidence, and a challenge to one such law was upheld.

The bill would establish significant safeguards that would help ensure that there were no violations of constitutional due process requirements, that defendants' rights were respected, and that trials were fair. Judges would act as gatekeepers as to whether evidence was admitted in a trial and in protecting defendants' rights. A judge would have to hold a hearing to consider whether to admit the evidence, and the hearing would have to

take place out of the jury's presence. The judge would have to determine that the evidence supported a finding that the defendant committed the separate offenses beyond a reasonable doubt. Judges are best positioned to determine if evidence of prior crimes is relevant or unduly prejudicial.

SB 12 would not increase the likelihood of wrongful convictions. Evidence of prior acts admitted under the bill would not become the sole basis for a conviction, but could be considered by courts in conjunction with all other evidence. Convictions for the current charge still would have to be decided by evidence beyond a reasonable doubt.

In addition, judges would be cognizant of having a fair trial when performing their gatekeeping roles, just as they are now when deciding about admitting any type of evidence. SB 12 would institute a stronger framework and more stringent requirements than under current law for judges to admit extraneous evidence, helping ensure proper convictions and guarding against reversals on appeal.

SB 12 would be fair to defendants by establishing a strong notice requirement when admitting evidence under the bill and would strengthen the requirement under current law. Notice would have to be given to a defendant at least 30 days before trial, allowing a defendant time to prepare a response.

This change would bring Texas in line with Federal Rules of Evidence 413(a). Under this rule, if a defendant is accused of sexual assault, courts are allowed to admit evidence that the defendant committed other sexual assaults. While this rule broadly applies to both adult and child victims, SB 12 would apply only to child victims.

OPPONENTS SAY:

SB 12 would go too far in eliminating the use of longstanding rules of evidence for certain offenses, which would violate the constitutional requirements of due process and could increase the likelihood of wrongful convictions. While sex crimes against children are heinous, the state also has an obligation to protect the rights of criminal defendants.

The current rules are long-established and have worked well to allow the admission during trials of appropriate evidence while meeting constitutional due process requirements. By changing these rules, SB 12 would violate these requirements and could remove a presumption of innocence. The current evidence rules are designed to ensure that persons

are tried fairly and convicted only for the current offense, not for past behavior or based on evidence used to show a propensity to do bad things. SB 12 arbitrarily would set aside those rules for certain offenses and effectively would lower the burden of proof in these cases. This would call into question whether defendants had adequate safeguards when accused of one of these crimes.

Setting aside the evidence rules could increase the likelihood of wrongful convictions for the offenses listed in SB 12. This type of evidence can be very prejudicial, and jurors might be wary of not convicting a defendant after hearing of other allegations.

The consequences of wrongful convictions in these cases would be especially serious because the punishments for sex crimes are harsh, and convictions would be almost impossible to overcome if there were no physical evidence. Wrongful convictions also would harm the victim and the public because the guilty person would go unpunished, free to commit another crime.

The gatekeeping function established by the bill would be inadequate to protect defendants. A judge alone would make a decision, which could be based on the word of one person, about whether the evidence supported a finding that a separate offense was committed. This would hinder the ability of a defendant to have a fair trial.

In allowing for evidence of some extraneous offenses to be admitted, SB 12 would make a significant change from current law. Under the Code of Criminal Procedure, extraneous offenses either have to be connected to the same child victim or, under the rules of evidence, other offenses must have some link to the current offense, such as motive or opportunity.

NOTES:

The companion bill, HB 330 by Riddle, was left pending in the House Criminal Jurisprudence Committee following a public hearing on April 9.

SUBJECT: Consent to immunization by minors who are parents or pregnant

COMMITTEE: Public Health — favorable, without amendment

VOTE: 10 ayes — Kolkhorst, Naishtat, Coleman, Collier, Cortez, S. Davis, Guerra, Laubenberg, J.D. Sheffield, Zedler

0 nays

1 absent — S. King

SENATE VOTE: On final passage, March 13 — 31-0 on Local and Uncontested Calendar

WITNESSES: For — Anna Dragsbaek, The Immunization Partnership; Jason Terk, Texas Pediatric Society, Texas Medical Association, Texas Academy of Family Physicians; (*Registered, but did not testify:* Nora Belcher, Texas e-Health Alliance; Melody Chatelle, United Ways of Texas; Brent Connett, Texas Conservative Coalition; Teresa Devine, Blue Cross and Blue Shield of Texas; Kathy Eckstein, Children's Hospital Association of Texas; Melissa Gardner, Texans Care for Children; Harry Holmes, Harris County Healthcare Alliance; Carrie Kroll, Texas Hospital Association; Joe Martinec, March of Dimes; Dennis Scharp, North Texas Citizen's Lobby; Rebekah Schroeder, Texas Children's Hospital; Steven Shelton, Texas Public Health Coalition; Ronald Woodruff, North Texas Citizen's Lobby; Chris Yanas, Teaching Hospitals of Texas)

Against — (*Registered, but did not testify:* David Huber, Texas Home School Coalition)

On — (*Registered, but did not testify:* Michele Adams, Department of Family and Protective Services; Wesley Hodgson, Department of State Health Services)

BACKGROUND: Under current law, children who are parents or pregnant cannot consent to their own immunizations, but children who are parents can consent to medical treatment, including immunizations, for their children.

Family Code, sec. 32.003 allows a child to consent to their own medical,

dental, psychological, and surgical treatment by a licensed physician or dentist under seven circumstances, including if:

- the child is unmarried and pregnant and consents to hospital, medical, or surgical treatment, other than abortion, related to the pregnancy; or
- the child is unmarried, a parent, has actual custody of his or her child and consents to medical, dental, psychological, or surgical treatment for the child.

Under this section, a child's consent to medical, dental, psychological, and surgical treatment cannot be denied because he or she is a minor. Consent of the parents, managing conservator, or guardian of a child is not necessary to authorize hospital, medical, surgical, or dental care. A licensed physician, dentist, or psychologist may, with or without the consent of a child who is a patient, advise the parents, managing conservator, or guardian of the child of the treatment provided to or needed by the child. A physician, dentist, psychologist, hospital, or medical facility may rely on the written statement of the child containing the grounds on which the child has capacity to consent to the child's medical treatment.

DIGEST:

SB 63 would authorize a child to consent to the child's own immunization for a disease if:

- the child was pregnant or was the parent of a child and had actual custody of that child; and
- the Centers for Disease Control and Prevention recommended or authorized the initial dose of an immunization for that disease to be administered before seven years of age.

The bill would allow a health care provider or facility to rely on written consent by the child as grounds for immunization. Consent would have to be in writing, signed by the person giving consent, and given to the doctor, hospital, or other medical facility that would administer the immunization. Under the bill, a qualifying child could not be denied immunization because of the child's status as a minor.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

SB 63, by allowing parents and pregnant minors to consent to their own immunizations, would make sure minor parents did not transmit vaccine-preventable infectious diseases to their babies. Under current law, minor parents may consent to immunization and medical treatment for their children but not for their own immunization.

Parents who are minors should be able to do what is in the best interest of their own children. This year, an estimated 50,000 adolescents under 18 will become parents in Texas. They need immunizations to protect their babies, especially those under 6 months who are extremely vulnerable to infectious diseases such as influenza and pertussis transmitted from a parent.

SB 63 would make it easier for all parents to do the right thing for their children. Current law makes it difficult for un-emancipated minor parents to get properly immunized against diseases that could affect their baby if they do not bring their parents with them to a doctor's appointment. The bill would not set a precedent for children to be treated without their parents' consent under their parents' health insurance policy, as current law already allows children to consent to their own health care under many circumstances.

The only immunizations allowed by the bill are those recommended or authorized by the U.S. Centers for Disease Control and Prevention (CDC) to be administered before 7 years of age. These immunizations are safe and are important to prevent infant death or illness.

SB 63 would be aimed at helping minor parents get immunizations against diseases that could affect their babies. The bill would exclude vaccinations for HPV (human papillomavirus) and meningitis, which are deadly diseases but do not pose a real and present risk to infants under the CDC definition. The bill would allow parents to do the most important thing now.

OPPONENTS SAY:

SB 63 would erode a parent's right to make decisions about their child's health. Just because a child has a child does not mean the parent should not be involved in their own child's health care, especially if the child is still under their parent's insurance policy. Immunizations can have negative side effects and should not be authorized without a parent's consent.

OTHER OPPONENTS SAY:

While SB 63 is necessary to protect vulnerable infants against vaccine-preventable diseases, the bill could be expanded to allow minor parents to get vaccinated against other deadly diseases, such as HPV and meningitis.

SUBJECT: Modifying requirements for court registry fund audits

COMMITTEE: County Affairs — favorable, without amendment

VOTE: 6 ayes — Coleman, Farias, Hunter, Kolkhorst, Krause, Simpson

1 nay — Stickland

2 absent — M. González, Hernandez Luna

SENATE VOTE: On final passage, April 4 — 31-0 on Local and Uncontested Calendar

WITNESSES: For — Craig Pardue, Dallas County; (*Registered, but did not testify:* Jim Allison, County Judges and Commissioners Association of Texas; Donald Lee, Texas Conference of Urban Counties; Mark Mendez, Tarrant County; Seth Mitchell, Bexar County Commissioners Court)

Against — None

BACKGROUND: Registry funds are monies relating to a matter before a court that are tendered to a county or district clerk for deposit in the registry of that court. A registry can hold deposits of monies from lawsuits, interpleaded funds, disputed funds, cash bonds, and funds awarded to a minor.

Local Government Code, ch. 117, subch. E sets out provisions that apply to funds paid into a court registry in a county with a population of more than 1.3 million (Bexar, Dallas, Harris, and Tarrant counties). Sec. 117.123 requires registry funds for these counties to be audited at the end of each fiscal year by an independent certified public accountant or a firm of accountants selected by the commissioners court. It also requires that a written report of the audit be delivered within 90 days after the last day of the fiscal year to the county judge, each county commissioner, and a clerk.

DIGEST: SB 356 would allow the county auditor, rather than an independent accountant, to perform the required audit of court registry funds in a county with a population of more than 1.3 million.

A written report of the audit would be delivered to the county judge, each

county commissioner, and a clerk no later than 180 days after the last day of the fiscal year.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

SB 356 would yield more thorough audits and could save the governments of Bexar, Dallas, Harris, and Tarrant counties unnecessary costs by allowing the county auditor to perform the state required fiscal examination of court registry funds. In Dallas County, the combined cost for auditing registry funds held by district and county clerks averages about $34,000 each year. This money could be spent on other county government services.

County auditors already perform a variety of unbiased examinations of a government's departments and funds, so they are best qualified to perform an audit of county registry funds. Typically, third-party auditors are better suited to examining businesses. The bill simply would afford the state's largest counties the same discretion that smaller counties already enjoy. All the work performed by the county auditor is scrutinized by the commissioners court, which is made up of elected officials accountable to voters. This scrutiny also would take place if the county auditor was chosen instead of an accountant to examine court registry funds.

OPPONENTS SAY:

SB 356 would remove an important safeguard that ensures court registry funds are safe from any possible impropriety related to an audit. Using a third-party auditor achieves a high level of impartiality when conducting an examination of a court registry. Because the county auditor is an employee of the county government, the bill would introduce the possibility of a conflict of interest that could put the funds of a registry at risk.

SUBJECT: Restricting persuasiveness of polygraph statements in certain proceedings

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Herrero, Carter, Burnam, Canales, Hughes, Leach, Moody

2 nays — Schaefer, Toth

SENATE VOTE: On final passage, March 27 — 30-0, on Local and Uncontested Calendar

WITNESSES: For — Travis Leete, Texas Criminal Justice Coalition; (*Registered, but did not testify*: Kay Forth, American Civil Liberties Union of Texas)

Against — None

DIGEST: Under SB 358, if a court found that the only evidence supporting an alleged violation of a condition of community supervision or release was an uncorroborated polygraph statement, the court could not:

- proceed with an adjudication of guilt on the charge for which community supervision was ordered;
- revoke community supervision; or
- revoke parole or mandatory supervision.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013, and would apply only to a hearing held on or after that date.

SUPPORTERS SAY: SB 358 would codify best practices and existing jurisprudence. The longstanding rule in Texas evidence law is that the result of a polygraph is inadmissible. The efficacy and persuasiveness of uncorroborated polygraph test results have been questioned by the Texas Court of Criminal Appeals. Given that probation and community supervision are cost-efficient and effective alternatives to incarceration, it is essential that they be revoked only when revocation is necessary and in the best interests of justice and the community. SB 358 would ensure that courts used an appropriate standard to prevent unnecessary revocation and findings of

guilt based on poor evidence.

The bill would not remove a useful tool from law enforcement or parole officers. The bill only would ensure that polygraph tests were used in an appropriate manner when introduced as evidence in certain administrative hearings. Polygraph tests can be useful in certain circumstances and still would be available to parole and probation officers under the bill.

OPPONENTS SAY:

SB 358 would take away a useful tool from law enforcement and parole officers. Polygraph tests are used as a condition of community supervision in sex offender treatment and can help parole or probation officers determine whether these offenders are complying with the other conditions of their supervision or release.

SUBJECT: Creating a task force to study maternal mortality and morbidity

COMMITTEE: Public Health — favorable, without amendment

VOTE: 9 ayes — Kolkhorst, Naishtat, Collier, Cortez, S. Davis, Guerra, S. King, J.D. Sheffield, Zedler

1 nay — Laubenberg

1 absent — Coleman

SENATE VOTE: On final passage, May 2 — 31-0

WITNESSES: *(On House companion, HB 1085)*
For — Lisa Hollier, Texas Medical Association, Texas District American Congress of Obstetricians and Gynecologists; (*Registered, but did not testify*: Jennifer Allmon, Texas Catholic Conference, the Roman Catholic Bishops of Texas; Jennifer Banda, Texas Hospital Association; Charles Brown; Trish Conradt, Coalition for Nurses in Advanced Practice; Kathy Eckstein, Children's Hospital Association of Texas; Laurie Glaze, One Voice Texas; Harry Holmes, Harris County Healthcare Alliance; Mandi Kimball, Children at Risk; Shannon Lucas, March of Dimes; Michael Matherne; Maureen Milligan, Teaching Hospitals of Texas; Josette Saxton, Texans Care for Children; Rebekah Schroeder, Texas Children's Hospital)

Against — (*Registered, but did not testify*: Ashley Chadwick, Freedom of Information Foundation of Texas; Ken Stanford II)

On — June Hanke, Harris Health System; (*Registered, but did not testify*: Sam Cooper III, Department of State Health Services)

BACKGROUND: Government Code, ch. 551 requires that certain meetings by government entities be open to the public. Government Code, ch. 552 establishes that information collected, assembled, or maintained by or for a government body is public information.

DIGEST: SB 495 would create the Maternal Mortality and Morbidity Review Task

Force under the Department of State Health Services.

Duties and meetings. The task force would have to:

- study and review cases of pregnancy-related deaths and trends in severe maternal mortality;
- determine the feasibility of the task force studying cases of severe maternal morbidity (nearly fatal complications); and
- make recommendations to help reduce the frequency of pregnancy-related deaths and severe maternal morbidity in Texas.

The task force would meet at least quarterly or at the call of the department commissioner. The task force meetings would be closed to the public.

Members. The task force would be a multidisciplinary advisory committee of 15 members, with the department commissioner appointing 13 of the members with specific health care experience. The remaining members would be the state epidemiologist or a designee and a representative from the department's family and community health programs. The bill specifies term lengths, and procedures for appointing members and filling vacancies. The members would not be compensated or reimbursed for travel and other expenses, but they could use teleconferencing and videoconferencing technology. The department commissioner would have to appoint the members of the task force by December 1, 2013.

When appointing members, the commissioner would have to include members from different geographic regions, communities that were affected by pregnancy-related death and severe maternal morbidity, and areas that lacked access to perinatal and intrapartum (childbirth) care services. The task force would also need to reflect the state’s racial, ethnic, and linguistic diversity.

The department and the task force could consult with relevant experts, stakeholders, state professional associations, and organizations. The bill would provide a list of experts, stakeholders, and organizations with whom the department and task force could consult. These individuals and organizations could not have access to any patient or provider identifying information. The department could enter into agreements with institutions of higher education to help fulfill the task force’s duties.

Case selection and confidentiality. The bill would create procedures for selecting cases and maintaining confidentiality. It would also provide immunity in certain situations.

Case selection. The department would have to provide the task force with the information necessary to review cases, and the information could not include patient or provider identifying information. The department would have to determine a statistically significant number of pregnancy-related deaths for review and pick the cases by random selection. They would also need to identify trends by analyzing aggregate data of severe maternal morbidity. If feasible, the department could randomly select cases of maternal morbidity for review.

A hospital, birthing center, or other custodian would have to provide the department with the requested information, and the information could be provided without patient or family authorization. A person who gave information to the department would not be subject to administrative, civil, or criminal penalties.

The department could have access to certain information that could include patient identifying information, but this information could not be disclosed to the task force or any other person. This information would be:

- birth records;
- fetal death records;
- maternal death records; and
- hospital and birthing center discharge data.

This bill would not apply to records related to voluntary or therapeutic terminations of pregnancy, and this information could not be collected, maintained, or disclosed under this bill.

Confidentiality. Any information about a pregnancy-related death or severe maternal morbidity would be confidential and any personal or provider identifying information would be privileged and could not be disclosed. The bill would specify certain types of information that could not be disclosed. The task force's work product and information obtained from the department would also be confidential.

The bill would list the types of information that would not be confidential,

including statistical information and certain aggregated data, among other things. The task force could publish statistical studies and research reports if these documents complied with certain requirements, including state and federal confidentiality laws and Health Insurance Portability and Accountability Act (HIPAA) rules.

Subpoena and discovery. The task force's work product and confidential information would not be subject to subpoenas or discovery and could not be introduced as evidence in any proceeding against a patient, family member, or health care provider.

Immunity. A task force member, or someone acting as an advisor, would not be liable for actions within the scope of task force functions, unless the individual acted with malice or without reasonable belief that the action was warranted. This would not provide immunity to someone who violated state law, federal law, or HIPAA rules.

Database. The department could establish and maintain an electronic database to track cases of pregnancy-related deaths and severe maternal morbidity. Only the department and the task force could access the database. The database could not disclose identifying information, including patient names, provider names, and specific provider locations.

Funding, reports, and rules. In order to fund the task force, the department would have to apply for federal funds and could accept gifts and grants.

By September 1, 2014, the department would need to submit a report to certain government authorities on the progress of establishing the task force and any legislative recommendations to help study pregnancy-related deaths and severe maternal morbidity.

Every even-numbered year, the department and the task force would need to submit a joint report to certain government authorities on any findings and recommendations. The department would need to disseminate the report to specified state professional associations and organizations, and it would be publicly available. They would not have to submit the first report before September 1, 2016.

The executive commissioner of the Health and Human Services Commission could adopt any necessary rules to implement the bill. Unless

continued in existence after Sunset review, the task force would be abolished on September 1, 2019.

Definitions. The bill would define a number of relevant terms, including maternal morbidity, perinatal care, and pregnancy-related death, among others.

This bill would take effect September 1, 2013.

SUPPORTERS SAY:

SB 495 would help reduce the number of pregnancy-related deaths and severe complications in Texas. Currently, the state's maternal mortality rate is higher than the national average and the Centers for Disease Control and Prevention (CDC) estimates that the actual number of maternal deaths can be two times greater than what is reported. Moreover, the rates of nearly fatal pregnancy-related complications, also known as severe maternal morbidity, are also rising. This bill would provide Texas something it lacks: a statewide system for collecting and analyzing data on pregnancy-related deaths and severe complications. With this information, the task force could make recommendations to improve maternal health services and outcomes.

By authorizing the department to study these important issues, the bill would help Texas improve existing services and reduce costs related to maternal deaths and severe complications. Ultimately, this could help decrease the government's health care expenditures.

The bill would take steps to protect identifying information and maintain confidentiality. This would include, in part, keeping task force meetings closed to the public. This would be necessary to safeguard the sensitive and personal nature of the data that would be discussed during meetings.

OPPONENTS SAY:

SB 495 would be unnecessary and inappropriately increase the size and scope of the state government. Data about maternal deaths and severe complications could and should be collected and analyzed by another entity, such as a private research institution.

The bill would lack transparency because the task force's meetings would be closed to the public. The department is funded by taxpayer dollars, so openness and accountability are critical. At the very least, the public should be allowed to comment on the task force's research methods and findings.

SUBJECT: Eliminating certain reporting requirements for Department of Agriculture

COMMITTEE: Agriculture and Livestock — favorable, without amendment

VOTE: 7 ayes — T. King, Anderson, M. González, Kacal, Kleinschmidt, Springer, White

0 nays

SENATE VOTE: On final passage, April 16 — 29-0

WITNESSES: *(On House companion bill, HB 2513)*
For — None

Against — None

On — Catherine Wright-Steele, Texas Department of Agriculture

BACKGROUND: Texas Agriculture Finance Authority (TAFA) provides financial incentives to individuals to establish or enhance their farm or ranch operations or to establish agriculture-related businesses.

The Texas Department of Rural Affairs (TDRA) was abolished and its core programs transferred to TDA in 2011.

DIGEST: SB 772 would eliminate several reporting requirements of the Texas Department of Agriculture (TDA), including several carried over from when the Texas Department of Rural Affairs (TDRA) was abolished and its core programs were transferred to TDA in 2011.

Texas Agriculture Finance Authority (TAFA) Report Submission Requirements. The bill would strike requirements that the Texas Agriculture Finance Authority (TAFA) file a copy of the annual budget and a copy of the activities report with the governor and Legislature each year.

Rural Issues Report. The bill would repeal Government Code, sec. 487.056 requiring the Texas Department of Rural Affairs (TDRA) to

submit a biennial report regarding the activities of the department, the activities of the Texas Rural Foundation, and any findings and recommendations relating to rural issues.

The bill would add reporting on the Texas Rural Foundation to the Texas Rural Policy Plan reporting.

Nutrition Farmer's Market Report. The bill would repeal Agriculture Code, sec. 15.006 requiring an annual TDA and Health and Human Services Commission report concerning the special nutrition program to distribute to certain participants of the W.I.C. (women, infants, and children) program food coupons redeemable only at farmers markets located in areas in which the program is implemented.

Report on Transactions Citrus Marketing Order. The bill would repeal Ag. Code, sec. 102.167 (e) and (f) requiring a biennial TDA report to the governor of transactions under provisions relating to citrus marketing agreements and licenses, a monthly TDA report to the comptroller of public accounts of all money received under such provisions, and a requirement that the comptroller deposit such money in the state treasury.

Community Telecommunications Alliance Report on Grant Projects. The bill would repeal Gov. Code, sec. 487.653 requiring TDRA to submit a biennial report to the Legislature detailing the grant activities of the program and grant recipients.

Condition of Rural Communities Annual Report. The bill would strike Gov. Code, sec. 487.051 (a)(5) regarding the annual report describing and evaluating the condition of rural communities.

Effective date. This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

SB 772 would eliminate obsolete and redundant reporting requirements for the Texas Department of Agriculture so that resources could be dedicated to relevant reporting requirements and direct customer service to Texans.

Texas Agriculture Finance Authority (TAFA) Report Submission Requirements. It is unnecessary for the Texas Agriculture Finance

Authority (TAFA) to file a copy of the annual budget and a copy of the activities report with the governor and Legislature each year. It would be more cost efficient to have information regarding an annual audit of the authority's accounts and operating and financial statements be readily available upon request.

Rural Issues Report. The biennial report containing information from Texas Department of Rural Affairs (TDRA) regarding the activities of the department, the activities of the Texas Rural Foundation, and any findings and recommendations relating to rural issues is a carryover from TDRA. It is redundant with a statutory report by the Texas Rural Health and Economic Development Advisory Committee, which was established when TDRA was abolished and its core programs transferred to TDA in 2011.

Nutrition Farmer's Market Report. The Nutrition Farmer's Market Report is redundant of federal reporting requirements for this federally funded program. The outlined information is readily available upon request so continuing to generate a unique report to meet the requirements of this statute is an inefficient use of resources.

Report on Citrus Marketing Order Transactions. Sec. 102.167 of the Agriculture Code authorizes TDA to establish a marketing order to limit or provide a method for limiting the total quantity of any grade, variety, size, or quality of citrus fruit that may be produced in three counties. TDA is authorized to establish a committee to collect an assessment and administer funds collected. Statute mandates a report on the fees and assessments collected. However, the citrus marketing order has never been used in its 29-year history.

Community Telecommunications Alliance Report on Grant Projects. The biennial report to the Legislature detailing the grant activities of the program and grant recipients is a carryover from the TDRA and is unnecessary because the program is not funded or operating.

Condition of Rural Communities Annual Report. The annual report describing and evaluating the condition of rural communities is a carryover from TDRA. It is redundant with a statutory report by the Texas Rural Health and Economic Development Advisory Committee established when TDRA was abolished and its core programs transferred to TDA in 2011.

OPPONENTS SAY:

No apparent opposition.

NOTES:

The House companion bill, HB 2513 by Springer, was reported favorably by the House Committee on Agriculture and Livestock on April 3 and sent to the Local and Consent Calendars Committee.

SUBJECT: In camera review of information in a suit under public information laws

COMMITTEE: Government Efficiency and Reform — Favorable, without amendment

VOTE: 6 ayes — Harper-Brown, Capriglione, Stephenson, Taylor, Scott Turner, Vo

0 nays

1 absent — Perry

SENATE VOTE: On final passage, April 4 — 31-0

WITNESSES: For — (*Registered, but did not testify:* Michael Schneider, Texas Association of Broadcasters; Brian Yarbrough, City of Houston)

Against — None

On — Lesli Ginn, Office of the Attorney General

DIGEST: SB 983 would allow information at issue in a lawsuit filed under the Public Information Act to be submitted for a judge's review "in camera," or privately in his or her chambers.

Upon receipt of the information at issue, the court would enter an order that would prevent the release or access by any person other than the court, a reviewing court of appeals, or parties permitted to inspect the information pursuant to a protective order.

The information filed with the court for in-camera inspection would be:

- attached to the order and transmitted by the court to the clerk for filing as "information at issue";
- maintained in a sealed envelope or in a manner that precluded disclosure of the information; and
- transmitted by the clerk to any court of appeals as part of the clerk's record.

Information filed with the court under the bill would not constitute "court records" and would not be made available by the clerk or any custodian of record for public inspection.

The bill would define "information at issue" as information held by a governmental body that formed the basis of a suit under the Public Information Act.

The bill would take effect on September 1, 2013.

SUPPORTERS SAY:

SB 983 would improve litigation under the Public Information Act (PIA) by protecting confidential information when it was under court review and later protecting it from inadvertent disclosure as part of a court record.

Public Information Act lawsuits occur when there is a dispute as to whether certain documents or records should be made public under the act. These suits determine whether or not the information should be made public, or in some cases, be shown to only one or a few groups that have special rights of access. The problem is that in a court proceeding, information entered into evidence is made part of the official record and is made public.

Appeals courts have ruled that documents or records in question in a PIA case must be part of the clerk's record so appellate courts will have all the appropriate evidence for review.

To protect information not yet declared publicly accessible under the PIA, the Office of the Attorney General, which handles a great deal of PIA litigation, has been protecting information in question with agreed orders. These orders state that the documents in question will be introduced to a court in camera. But some judges refuse to acknowledge these agreements because they do not believe the law allows them to recognize such agreements. This can result in information that has been ruled confidential under the PIA being exposed as part of the public court record.

SB 983 would create an easy and uniform method to protect the information at issue in PIA litigation while the court decided whether the information was public or not. While the use of in camera review is already commonly done, the bill only would make explicit a judge's ability to review evidence in this manner. In camera review combined with an order protecting the information for appellate review would allow for

proper litigation under the PIA and for information to be released, or not, on the merits of a case, rather than as an inadvertent disclosure as part of a court record.

OPPONENTS SAY:

No apparent opposition.

NOTES:

The House companion bill, HB 2246 by Harper-Brown, was left pending in the Government Efficiency & Reform committee on March 18.

SUBJECT: Enhanced review process for land reclamation tire projects

COMMITTEE: Environmental Regulation — favorable, without amendment

VOTE: 6 ayes — Harless, Márquez, Isaac, Kacal, C. Turner, Villalba

0 nays

3 absent — Lewis, Reynolds, E. Thompson

SENATE VOTE: On final passage, April 4 — 31-0, on Local and Uncontested Calendar

WITNESSES: For — (*Registered, but did not testify*: Brian Sledge, Solid Waste Association of North America, Texas Chapter)

Against — None

On — (*Registered, but did not testify*: Steven Shepherd, Texas Commission on Environmental Quality)

BACKGROUND: Title 30, Texas Administrative Code, subchapter F, §328.66 governs land reclamation projects using tires. The code requires anyone intending to initiate a land reclamation tire project to submit an application to the Texas Commission on Environmental Quality (TCEQ) for review. A project cannot move forward without approval from the executive director, who has 60 days to review the application. The applicant must provide notice of the project to the appropriate local governmental entities and the general public by mail and publishing in the newspaper.

"Land reclamation project using tires" is defined in §328.53 as a project to fill, rehabilitate, improve, and/or restore already excavated, deteriorated or disturbed land for the purpose of restoring it to its natural grade and prepare it for reuse.

Under §328.66, any excavation pit, hole or other disturbed land area to be used for a tire reclamation project must have existed beforehand and must have been excavated for other purposes. Shredded, split or quartered tires

placed below ground have to be mixed with inert filling material (e.g. dirt) in no more than a 50-50 proportion. In addition, tire pieces may be placed no closer than 18 inches below the final grade or ground surface.

DIGEST:

SB 1156 would prohibit a person from beginning a land reclamation tire project without a permit issued by the TCEQ.

TCEQ by rule would prescribe minimum standards to protect the soil and water for a land reclamation tire project and would adopt procedures for applications and permitting by September 1, 2014.

Permitting process. TCEQ could not grant a permit for a land reclamation tire project without either first receiving comments from local entities in which the proposed project would be located — including a municipality, county commissioners court, groundwater conservation district, regional planning commission, council of governments, or similar regional planning agency — or the earlier of:

- sixty days after the application was filed; or
- the day after the county commissioners court had conducted two regularly scheduled meetings following the date the application was filed.

TCEQ could not grant a permit if it received notice that the proposed project violated a local regulation, ordinance, order, or other law in the area. TCEQ could deny, revoke, suspend, or amend a permit for good cause due to considerations of public health and safety, air or water pollution, or land use. TCEQ also could amend, extend, transfer, or renew a permit.

Application. An application for a land reclamation tire project would have to include:

- a legal description of the area to be reclaimed;
- a map clearly identifying the area to be reclaimed and its topography;
- an affidavit from the property owner certifying that the reclamation project complied with the relevant laws and rules;
- a demonstration of the seasonal high groundwater level in the area; and
- an analysis and evaluation of the environmental impacts on the soil

and groundwater in the area of the proposed project and a comparison of at least one reasonable alternative method of land reclamation for the project.

TCEQ could request additional information upon determining that an application did not address all applicable requirements.

Other provisions. The bill would codify provisions in the Texas Administrative Code requiring applicants to provide notice to local entities and that all tires used to fill land would have to be split, quartered, or shredded. TCEQ could grant an exception if warranted by circumstances.

Any person who was responsible for an ongoing or pending land reclamation tire project who had yet to bury tires before the bill's effective date would have to obtain a permit under the bill before starting the project. If a project had buried tires before the effective date, it would be subject to the law in effect on the date the tires were placed below ground.

SB 1156 bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

SB 1156 would provide an enhanced opportunity for local entities, including municipalities, counties, and groundwater conservation districts, to review and comment on a proposed permit for a land reclamation tire project. Under current TCEQ rules for such projects, local entities have the opportunity to comment on a project, but there is nothing stopping TCEQ from granting the application for the project even if it is found to be against local laws and poses serious health and safety concerns.

Creating a guaranteed opportunity in statute for local entities to review a project would provide a chance to determine if a particular proposal violated any local ordinances or other regulations. Under the bill, TCEQ would not be allowed to issue a permit for projects that violated local provisions.

Local entities would have 60 days, or two regularly scheduled commissioners' court meetings, to comment on a permit. Explicitly allowing TCEQ the authority to deny, revoke, suspend, or amend a permit for good cause would empower the commission to protect the public against land reclamation tire projects that could harm public health and

water quality.

OPPONENTS SAY:

SB 1156 would elevate the permitting process for land reclamation tire project to a higher tier of scrutiny, review, processing, and contested case hearing. The enhanced permitting process authorized in the bill — that TCEQ would implement administratively by rule — would raise the level of TCEQ review of these projects to that of a municipal landfill.

Under current rules, applications are processed and issued by the executive director, but they would be subject to a full formal comment period, response to comment, and contested case hearing under SB 1156. This higher standard of review would make it harder for land reclamation tire projects to initiate new sites. The bill would add regulatory hurdles for these businesses without a clear and pressing public health and safety concern.

A higher standard of governmental review for these projects would result in added costs for obtaining an authorization, which would be passed on to consumers. Raising the costs of retiring tires could have negative effects, such as increasing the incidence of illegal disposal.

SUBJECT: Revising the duties and composition of the Forensic Science Commission

COMMITTEE: Homeland Security and Public Safety — committee substitute recommended

VOTE: 8 ayes — Pickett, Fletcher, Cortez, Dale, Flynn, Lavender, Sheets, Simmons

0 nays

1 absent — Kleinschmidt

SENATE VOTE: On final passage, April 4 — 30-0

WITNESSES: No public hearing

BACKGROUND: In 2005, the 79th Legislature created the Forensic Science Commission.

Under Code of Criminal Procedure, art. 38.01 the commission is composed of nine members, including:

- four appointed by the governor, including two with expertise in forensic science, one prosecutor, and one defense attorney;
- three members appointed by the lieutenant governor, including one specialist in clinical laboratory medicine from the University of Texas, one specialist in clinical laboratory medicine from Texas A&M University, and one expert in pharmaceutical laboratory research from Texas Southern University; and
- two members appointed by the attorney general, including one director or division head from the University of North Texas Health Science Center at Fort Worth Missing Persons DNA Database, and one expert in forensic science or statistical analyses from the Sam Houston State University College of Criminal Justice.

Commission members serve two-year terms, and the governor appoints the presiding officer.

The duties of the commission are to:

- develop and implement a reporting system for accredited laboratories, facilities, or entities to report professional negligence or misconduct;
- require all laboratories, facilities, or entities that conduct forensic analyses to report professional negligence or misconduct to the commission; and
- investigate allegations of professional negligence or misconduct that would substantially affect the integrity of the results of a forensic analysis conducted by an accredited laboratory, facility, or entity.

DIGEST:

CSSB 1238 would change the duties of the Forensic Science Commission (FSC) with regard to investigations, exempt certain information from its investigations from disclosure under the Public Information Act, require an annual report from the commission, grant the governor appointment power for all board members, and administratively attach the commission to Sam Houston State University.

Investigations. The bill would require the commission to investigate in a timely manner any allegation of professional negligence or misconduct that would substantially affect the integrity of the results of a forensic analysis conducted by a crime laboratory.

If the FSC conducted an investigation of a crime laboratory accredited by the Department of Public Safety (DPS), the commission would produce a written report that included, in addition to information required under current law, the following information:

- the commission's observations regarding the integrity and reliability of the forensic analysis conducted;
- best practices identified by the commission during the course of the investigation; and
- other relevant recommendations as determined by the commission.

The DPS director would have to require accredited laboratories, facilities, or entities to agree to the commission's requests for cooperation.

If the FSC conducted an investigation of a crime laboratory that was not accredited by DPS, or if the investigation was conducted pursuant to an allegation involving a forensic method or methodology that was not an accredited field of forensic science, the information listed above would

appear in the written report that followed the investigation.

CSSB 215 also would allow the commission to initiate for educational purposes an investigation of a forensic analysis without having received a complaint alleging professional negligence or professional misconduct if the commission voted that such an investigation would advance the integrity and reliability of forensic science. The written report following the conclusion of a self-initiated investigation would include the information listed above.

When concluding an investigation of a non-accredited laboratory or a self-initiated investigation, the FSC would not be able to make a determination about whether professional negligence or professional misconduct occurred.

The commission could require that a crime laboratory pay any costs incurred during the commission's investigation.

Findings related to guilt or innocence. The commission would not be able to issue a finding related to the guilt or innocence of a party in an underlying civil or criminal trial involving conduct investigated by the commission. Further a report prepared by the FSC would not be admissible in a civil or criminal action.

Open records limitation. Information filed as part of an allegation of professional misconduct or professional negligence or that was obtained during an investigation would not be subject to release under the Public Information Act until the conclusion of the FSC's investigation.

Local government corporations. CSSB 1238 would include in the definition of a criminal justice agency local government corporations that allocated substantial parts of their budgets to conducting criminal identification activities, including forensic analysis.

Composition of the commission. CSSB 215 would give the governor responsibility to appoint all the members of the FSC. The bill would remove the requirement that the appointee selected from the faculty of Texas Southern University have experience in pharmaceutical laboratory research. The bill would set staggered expiration dates for the two-year terms of the board members.

Annual report. By December 1 each year, beginning in 2014, the commission would publish a report that included several items listed in the bill, including:

- a description of complaints filed in the preceding year and their disposition and status;
- a description of any forensic method recommended to the public safety director for validation or approval as part of the crime laboratory accreditation process;
- activities of the commission with respect to developments in forensic science made or used in other state or federal investigations; and
- recommendations for best practices concerning the definition of forensic analysis.

Affiliation with Sam Houston State University. The FSC would be attached administratively to Sam Houston State University. The Texas State University Board of Regents would have to provide administrative support to the commission. Neither university would have authority or responsibility for the duties of the commission.

Effective date. This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

CSSB 1238 would clarify the FSC's jurisdiction, making it clear that the commission could review unaccredited forensic disciplines, such as arson and fingerprinting, and unaccredited forensic entities. These reviews would be forward looking and would attempt to make improvements in forensic science. They would not include a determination of negligence or misconduct.

The bill also would allow the FSC to proactively initiate a review of a forensic discipline for educational purposes without first receiving a complaint from the public, if the commission determined that the review would advance the integrity and reliability of forensic science in Texas.

Under the bill, the FSC would have appropriate investigative powers. The commission's current focus on making public reports of its reviews is the best way to improve forensic science in Texas. Several instances of misconduct and negligence would not have come to light absent its current

review practices. If the FSC had broader investigatory or enforcement powers, such as the ability to levy fines, it would have a chilling effect on the current high levels of voluntary disclosures and petitions for review by forensic science groups and institutions.

The bill would move board appointments to the governor's office to ensure Senate review and confirmation. The Senate should be able to weigh in on all the major appointments in the state, and the bill would ensure it vetted all of the commission board members.

CSSB 1238 would clarify that local government corporations that spend a substantial portion of their budgets on criminal justice investigations are considered law enforcement agencies. This would grant the City of Houston Independent Crime Lab access to the FBI's CODIS database, which stores DNA information. This access is crucial and this designation of the Houston lab is required by the FBI for access.

It is appropriate that the commission not have jurisdiction over medical examiners because FSC staff report that if they were to review autopsies, they would have time for nothing else. Further, requiring autopsy review under the bill would result in a significant fiscal note because forensic pathology is an expensive field.

OPPONENTS SAY:

CSSB 1238 would do little to expand the authority or investigative power of the FSC when such strengthening is needed to improve the shoddy state of forensic science in Texas. The state's long history of sloppy investigations conducted with outdated techniques calls out for stronger action.

The bill should not consolidate appointment power in the governor's office. It would be better to diversify board appointments, which would keep the appointment power split between different statewide officials.

The commission should have jurisdiction over medical examiners because autopsies are one of the most common, and most important, pieces of forensic evidence used by law enforcement.

NOTES:

Unlike the Senate-engrossed version, CSSB 1238 would include in the definition of a criminal justice agency local government corporations that allocate substantial parts of their budgets to conducting criminal identification activities, including forensic analysis.

SUBJECT: Prosecution of money laundering and forfeiture of certain contraband

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Herrero, Carter, Burnam, Canales, Leach, Moody, Toth

0 nays

1 absent — Hughes

1 present, not voting — Schaefer

SENATE VOTE: On final passage, May 1 — 31-0

WITNESSES: (*On House companion bill, HB 3138)*
For — (*Registered, but did not testify:* Morgan Dahse and Jason Larman, Montgomery County Criminal District Attorney's Office)

Against — (*Registered, but did not testify:* Kristin Etter, Texas Criminal Defense Lawyers Association)

On — (*Registered, but did not testify:* Forrest Mitchell and Kent Richardson, Office of the Attorney General)

DIGEST: **Money laundering.** SB 1451 would add funds used in the commission of an offense to the definition of proceeds of criminal activity for the offense of money laundering.

Forfeiture of substitute property. "Substitute property" would mean property that was not contraband and that was owned by a person who was or had been the owner of, or had an interest in contraband with an aggregate value of $200,000 or more.

Substitute property would be able to be seized under a search warrant if the contraband:

- could no longer be located after the exercise of reasonable diligence;

- had been transferred, conveyed, sold, or sold to or deposited with a person other than the owner or interest holder;
- was not within the jurisdiction of the court;
- had substantially diminished in value;
- had been commingled with other property and could not be readily distinguished or separated; or
- was proceeds gained in the commission of a felony and was used to acquire other property that was not within the jurisdiction of the court.

A district court could issue a search warrant authorizing a peace officer to seize substitute property if the officer submitted an affidavit that stated:

- probable cause for the commission of an offense giving rise to forfeiture of contraband;
- a description of the contraband involved and the estimated current fair market value of the substitute property to be seized;
- the reasons the contraband was unavailable for forfeiture;
- probable cause to believe that the owner of the substitute property owned or had an interest in contraband with an aggregate value of $200,000 or more in connection with the commission of an underlying offense; and
- that due diligence had been exercised in identifying the minimum amount of substitute property necessary to approximate the estimated highest fair market value of the contraband during the period in which the owner of the substitute property had an interest in the contraband.

After seizure of substitute property, the disposition would proceed as in other forfeiture except that the prosecutor would need to prove by a preponderance of the evidence:

- that the contraband was subject to seizure and forfeiture;
- the highest fair market value of that contraband during the period in which the owner of the substitute property owned or had interest in the contraband;
- the fair market value of the substitute property at the time it was seized; and
- that the owner of the substitute property owned or had an interest in contraband with an aggregate value of $200,000 or more in

connection with the commission of an underlying offense.

For the purposes of determining the aggregate value of the contraband, the owner would not be required to have simultaneously owned all of the property constituting the contraband. If the fair market value of the substitute property seized exceeded the highest fair market value of the contraband, the court would need to make appropriate orders to ensure that property equal in value to the excess was returned to the person or persons from whom the substitute property was seized.

Property removed from Texas. A peace officer who identified contraband determined to be located outside of Texas would be required to provide the prosecutor a sworn statement that identified the contraband and the reasons the contraband was subject to seizure. On receiving the sworn statement, the prosecutor could file a notice of intended forfeiture in a district court in:

- the county in which the contraband or proceeds used to acquire the contraband were known to be situated before their removal from the state;
- the county in which any owner or possessor of the contraband had been prosecuted for an underlying offense for which the property was subject to forfeiture;
- the county in which venue existed for prosecution of an underlying offense; or
- Travis County.

The prosecutor would be required to request that citation be served on any person who owned or was in possession or control of the contraband to which the article applied and, on proper service, could move to have the court order that the contraband be:

- returned or brought to the jurisdiction of the court; or
- delivered to an agent of this state for transportation to the jurisdiction of the court.

If it was found that any person after being served with such a citation had transported, concealed, disposed of, or otherwise acted to prevent the seizure and forfeiture of contraband located outside of the state, the court could:

- order the payment to the prosecutor of costs incurred in investigating and identifying the location of the contraband, including discovery costs, reasonable attorney's fees, expert fees, other professional fees, and travel expenses;
- enter a judgment for civil contempt and impose a fine of not more than $10,000 or less than $1,000, confinement in jail for not more than 30 days or less than 10 days, or both a fine and confinement;
- enter a judgment of forfeiture of the person's interest in the contraband;
- enter a judgment in the amount of the fair market value of the contraband;
- impose a civil penalty of not more than $25,000 or less than $1,000 for each item of contraband, or each separate fund, of which the person transported, concealed, disposed, or otherwise acted to prevent the seizure and forfeiture; or
- order any combination of these penalties.

The prosecutor would be entitled to all reasonable discovery in accordance with the Texas Rules of Civil Procedure to assist in identifying and tracking down contraband located outside of Texas.

If the court ordered the return of contraband under the bill, it would be subject to seizure and forfeiture upon its return.

Suit for proceeds. A peace officer who identified proceeds that were gained from the commission of an offense under the bill would be required to provide the prosecutor with an affidavit that identified the amount of the proceeds and stated probable cause that the proceeds were contraband subject to forfeiture. On receiving the affidavit, the prosecutor could file for a judgment in the amount of the proceeds in a district court in:

- the county in which the proceeds were gained;
- the county in which any owner or possessor of the property was prosecuted for an underlying offense;
- the county in which venue existed for prosecution of an underlying offense;
- the county in which the proceeds were seized; or
- Travis County.

If the court determined that probable cause existed for the suit to proceed, the court would be required to order that citation be properly served on all

defendants named in the suit. Each person shown to have been a party to an underlying offense would be jointly and severally liable in a suit under the bill.

Multiple recovery prohibited. The prosecutor could use any combination of the methods under the bill to recover the value of contraband. A court would not be able to award or forfeit property or proceeds that exceeded the highest fair market value of the contraband subject to forfeiture for the offense.

The bill would take effect September 1, 2013 and would apply only to the forfeiture of property in relation to an offense or an offense itself committed on or after that date.

SUPPORTERS SAY:

SB 1451 would help law enforcement investigate and prosecute money laundering crimes in Texas. Criminals who launder money engage in a practice known as "structuring" in an attempt to fly under the radar. This involves depositing money in small increments to avoid reporting the transactions, in violation of federal regulations that require anyone who executes a cash transaction of $10,000 or more to file a currency transaction report. The crime occurs contemporaneously with the transfer of the money, which precludes it from the current definition of "proceeds" under the Penal Code. The practice is becoming insidious and popular among money launderers because it is nearly impossible to prosecute under Texas law. By expressly providing that transfer of proceeds used in the commission of a criminal act constitutes a state money laundering offense, SB 1451 would close that loophole, giving law enforcement the power to prosecute money launderers and criminal organizations.

The bill would allow peace officers to keep up with criminals who tried to stay one step ahead. Sometimes in searching for contraband, peace officers discover that the property has disappeared or been sent to another state. Law enforcement frequently relies on dated information or evidence, giving criminal organizations an edge to destroy or remove evidence or sell contraband and buy clean property. SB 1451 would mitigate this advantage by allowing law enforcement to seize substitute property if they were unable to find contraband. The bill would provide protections to ensure that peace officers and law enforcement did not recover more than the value of the contraband for which they were looking.

OPPONENTS

SB 1451 would make it easier for law enforcement to subject a person's

SAY: property to forfeiture. By allowing for forfeiture of substitute property, the bill could allow law enforcement to seize a person's home or belongings that had been purchased with lawful proceeds. Only contraband and illegally obtained property should be subject to forfeiture. This bill would have a serious detrimental effect on the property rights of Texans.

NOTES: House companion, HB 3138 by Sheets, was placed on the General State Calendar on May 8 but not considered.

SUBJECT: Permitting TDI fund transfers for examination expenses

COMMITTEE: Insurance — favorable, without amendment

VOTE: 7 ayes — Smithee, Eiland, G. Bonnen, Morrison, Muñoz, Taylor, C. Turner

0 nays

2 absent — Creighton, Sheets

SENATE VOTE: On final passage, April 11 — 31-0, on Local and Uncontested Calendar

WITNESSES: (*On House companion bill, HB 3697:*)
For — None

Against — None

On — Kevin Brady, Texas Department of Insurance; (*Registered, but did not testify:* Jamie Walker, Texas Department of Insurance)

BACKGROUND: The Texas Department of Insurance (TDI) carries out financial and actuarial examinations of insurance companies' solvency as part of its Financial Regulation Division. In 2011, the 82nd Legislature enacted SB 1291, which established a self-directed budget within TDI for this purpose and prohibited the department's operating budget from being used directly or indirectly to fund its examination functions.

TDI's self-directed budget is funded by assessments on insurance companies' examinations. This money is deposited in an account in the Texas Safekeeping Trust Co. to pay examination costs. Insurance companies receive from the Comptroller of Public Accounts credits reducing their premium tax liability in the amount they were charged in examination fees.

DIGEST: SB 1665 would permit TDI's self-directed account to reimburse its operating account for the reimbursement of premium tax credits for examination costs.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

SB 1665 would allow SB 1291 (82nd) to work as it was intended in a transparent manner. The 83rd Legislature's proposed budget would require TDI use its operating account to reimburse the Comptroller of Public Accounts $10 million in fiscal year 2015 for premium tax credits issued for examination costs. This would conflict with sec. 401.252, Insurance Code, as enacted by SB 1291 (82nd), which prohibits TDI's operating account from paying examination costs, even indirectly. If SB 1 required TDI to reimburse the Comptroller for examination costs and TDI was unable to use its self-directed account to reimburse its operating account, the department would be required to raise maintenance taxes on insurance companies to continue funding its operations at present levels. This would be a circuitous and imprecise method of funding examinations.

The bill would be a simple but important action to maintain TDI's capacity to ensure the financial integrity and solvency of Texas' insurance companies. SB 1291 (82nd) has been effective in attracting and retaining qualified examiners and actuaries to TDI, and SB 1665 would preserve this.

OPPONENTS SAY:

No apparent opposition.

NOTES:

The House companion bill, HB 3697 by Smithee, was left pending in the House Insurance Committee on April 2.

SUBJECT: Authorizing expedited air emissions permitting and charging a fee

COMMITTEE: Environmental Regulation — favorable, without amendment

VOTE: 7 ayes — Harless, Márquez, Isaac, Kacal, E. Thompson, C. Turner, Villalba

0 nays

2 absent — Lewis, Reynolds

SENATE VOTE: On final passage, April 22 — 30-1 (Seliger)

WITNESSES: (*On House companion bill, HB 2823*)
For — Jeff Saitas and Rich Walsh, Valero Energy Corp.; Mark Vickery, Texas Association of Manufacturers; (*Registered, but did not testify*: Kathy Barber, National Federation of Independent Business-Texas; Thure Cannon, Texas Pipeline Association; June Deadrick, CenterPoint Energy; Mark Gipson, Devon Energy; Steve Hazlewood, Dow Chemical; Annie Mahoney, Texas Conservative Coalition; Warren Mayberry, DuPont; Mike Meroney, Huntsman Corp., Sherwin Alumina, BASF Corp.; Stephen Minick, Texas Association of Business; Julie Moore, Occidental Petroleum Corp.; Bill Oswald, Koch Companies; Neftali Partida, Phillips 66; Steve Perry, Chevron USA; Mari Ruckel, Texas Oil and Gas Association; Lindsay Sander, Markwest Energy; Terri Seales, Ascend Performance Materials; Julie Williams, Chevron USA Inc.; Daniel Womack, Texas Chemical Council)

Against — (*Registered, but did not testify*: Matthew Haertner, Public Citizen; Melanie Oldham; Scheleen Walker, Sierra Club Lone Star Chapter)

On — Rodrigo Carreon; Steven Hagood, Texas Commission on Environmental Quality

BACKGROUND: The Texas Commission on Environmental Quality (TCEQ) issues air emission permits under the authority of Health and Safety Code, sec.

382.051.

DIGEST:

SB 1756 would authorize applicants to request TCEQ to expedite the processing of air emission permits if the applicant demonstrated that the purpose of the application would benefit the economy of the state or an area of the state.

The TCEQ executive director could grant the request for expedited processing if he or she determined that granting the request could benefit the economy. The TCEQ would prescribe the manner in which an applicant could request expedited review. The bill would authorize a surcharge, developed by rule, to already existing application fees in an amount sufficient to cover the expense of the expedited request.

The TCEQ could authorize overtime or compensatory pay or the use of contract labor to process expedited permits. The overtime or contract labor would not count be used in the agency's calculation of full-time equivalents allocated to the agency.

SB 1756 would provide that the expedited permitting process would not affect contested case hearings, or other regulatory requirements, including notice, opportunities for public hearings, and submission of public comments.

SB 1756 would require that rules adopted to implement the bill follow Government Code, ch. 2001 (Administrative Procedure). The rule(s) would have to include a provision regarding notice indicating the permit application was being processed in an expedited manner. TCEQ would be required to adopt rules as soon as practicable.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

SB 1756 would give TCEQ added flexibility in addressing the backlog of applications for air emission permits, while ensuring that all air permits received a thorough review and the public input into the permitting process was not weakened. TCEQ has limited authority to provide expedited review through programs such as the governor's economic development program, but does not have a mechanism to recover costs, nor the ability to process a significant number of permits on an expedited

basis.

As of April 30, TCEQ had 2,548 air emission permits under review; 384 applications were exceeding the agency's internal processing timeframes, which vary depending on the type of project. Since 2007, staffing at TCEQ's air permitting division has decreased while the workload, due in part to new oil and gas exploration and economic growth, has increased dramatically. The number of projects since 2007 has increased by 50 percent and is projected to double from the 2007 levels in fiscal 2013. TCEQ has in the past used outside contractors to address permitting backlogs.

The bill would allow TCEQ to develop rules so that permit applicants could apply for expedited permitting and pay a surcharge. Funds from the surcharge would be used to pay overtime or hire contractors to handle the request for expedited process.

SB 1756 would benefit small businesses. Most of the applicants for expedited review are expected to be large businesses seeking expedited review of facilities worth tens of millions of dollars. The bill, by allowing TCEQ to bring additional resources to permit those large projects, would free up other resources to address the needs of smaller applicants, who often get a "permit by rule." Louisiana reduced its air emissions permitting backlog by implementing a similar expedited air permitting option.

Nothing in HB 1756 would undermine the public's existing rights to participate in the permitting process. Expedited permits would have the same notice and contested case requirements as existing permits. TCEQ would have to develop rules that provided notice that a permit was undergoing expedited permitting as part of its existing notice requirements.

OPPONENTS SAY:

Giving TCEQ expedited permitting authority for air emissions permits could harm small businesses applying for air permits. It is likely that only large companies would apply for expedited permitting, potentially diverting resources from the processing of other air permits, specifically from those who could not afford to pay for the expedited permitting fee.

TCEQ air quality permitting staff should be funded, and all fees adjusted, at levels to maintain a permitting staff that is capable of addressing the state's air permitting backlog. Doing so, through the appropriations

process, would help ensure that all permits were treated equally. The proposed mechanism of allowing the expedited permit surcharge fees to supplement employee overtime could create the unintended consequence of employees failing to give the permit applications a thorough review due to the financial incentive provided by the payment of compensatory time.

NOTES:

The House companion, HB 2823 by Villalba, was left pending in Environmental Regulation Committee on April 9.

SUBJECT: OIG investigations of Medicaid provider fraud

COMMITTEE: Human Services — committee substitute recommended

VOTE: 7 ayes — Raymond, N. Gonzalez, Naishtat, Rose, Sanford, Scott Turner, Zerwas

2 nays — Fallon, Klick

SENATE VOTE: On final passage, April 9 — 31-0

WITNESSES: For — Robert Anderton; Hugo Berlanga, Texas Dentists for Medicaid Reform; Jose Cazares, Texas Dental Association, Texas Academy of General Dentistry; Everett Evans; John Holcomb, Texas Medical Association; Behzad Nazari, Texas Dentists for Medicaid Reform; Juan Villarreal, Harlingen Family Dentistry; Chuck Young, Texas Dentists for Medicaid Reform; (*Registered, but did not testify:* Jay Arnold, South Texas Dental; Susanne Elrod, Texas Council of Community Centers; Marina Hench, Texas Association for Home Care & Hospice; Fred Houston; Lorie Imken; Lee Johnson, Texas Council of Community Centers; Annie Mahoney, Texas Conservative Coalition; Tyler Rudd, Texas Academy of Pediatric Dentistry)

Against — None

On — Douglas Wilson, Health and Human Services Commission - Office of Inspector General; (*Registered, but did not testify:* Karen Nelson, Health and Human Services Commission - Office of Inspector General)

BACKGROUND: Government Code, sec. 531.102 identifies the Health and Human Services Commission's Office of Inspector General as being responsible for the investigation of fraud and abuse in the provision of health and human services, including allegations of fraud or abuse in the Medicaid system.

DIGEST: CSSB 1803 would specify procedures for Office of Inspector General (OIG) investigations of Medicaid fraud and abuse and the providers' appeals processes following determinations of credible allegations of fraud.

Definitions. CSSB 1803 would add the following definitions to Government Code, ch. 531, subch. C, governing Medicaid fraud and abuse:

- "abuse" would mean a provider practice inconsistent with sound business or medical practices that results in an unnecessary cost to the Medicaid program;
- an "allegation of fraud" would be an unverified allegation of Medicaid fraud from any source, including a fraud hotline, claims data analysis, provider audit, law enforcement investigation, and others;
- a "credible allegation of fraud" would be an allegation verified as reliable after careful review on a case-by-case basis of all allegations, facts, and evidence.

"Fraud" would continue to mean an intentional deception or misrepresentation that could knowingly result in an unauthorized benefit to that or another person.

Payment holds. CSSB 1803 would require that the OIG conduct a preliminary investigation of any allegation of fraud or abuse against a provider. Before proceeding to a full investigation, the OIG would prepare a preliminary investigation report documenting the allegation, evidence reviewed (if available), findings, and a determination of whether a full investigation was warranted. The OIG would refer to the Office of Attorney General's Medicaid fraud control unit cases involving a provider's suspected criminal conduct or the destruction, falsification, or withholding of any provider records.

The bill would require that the OIG impose a payment hold without prior notice on claims for Medicaid reimbursement on the determination that a credible allegation of fraud existed, when requested by the fraud control unit, or to compel a provider to produce records.

In cases of a referral from the OIG to the fraud control unit, the unit would be permitted to withhold payment from a provider until its investigation and any associated enforcement proceedings were complete, or the unit or other law enforcement or prosecuting authorities determined there was insufficient evidence of provider fraud. The OIG would be required to request on a quarterly basis the unit's or law enforcement agency's

certification that the credible allegation of fraud continued to be investigated and warranted a payment hold. Any payment hold would be discontinued if the unit declined to accept a referral.

CSSB 1803 would require that the OIG provide notification to a provider of a payment hold in accordance with federal regulations. The notice would include the specific basis for the hold, including the claims supporting the allegation at that point in the investigation, and a representative sample of documents that formed the basis of the hold. The notice also would describe the administrative and judicial due process remedies available to the provider.

The OIG would be required to employ a licensed physician medical director and a licensed dentist dental director, preferably with knowledge of the Medicaid program, to ensure any investigative findings had been reviewed by a qualified expert before the imposition of a payment hold. The OIG would be required to post on its website a description and video explaining the procedures used to determine whether to impose a payment hold.

The bill would require that the Health and Human Services Commission (HHSC) executive commissioner adopt rules for the OIG establishing criteria for initiating and conducting a full fraud or abuse investigation, training investigators, and determining when good causes existed to discontinue, partially discontinue, or not impose a payment hold. The bill would establish numerous criteria by which the OIG would determine good cause for these purposes.

Providers subject to payment holds would be permitted to seek informal resolution of issues identified in the notice of payment withholding according to parameters established by the bill, including in the presence of a neutral third party. At the same time, providers would have the option of seeking an expedited administrative hearing through HHSC's appeals division or the State Office of Administrative Hearings (SOAH). CSSB 1803 would provide criteria for dividing the costs of a hearing.

Following an administrative hearing, a provider subject to an OIG payment hold would be permitted to appeal the final administrative order by filing a petition for judicial review in a district court in Travis County.

Recoupments. CSSB 1803 would require that a provider receive notice of

any proposed recoupment of overpayments, debts, or penalties related to Medicaid fraud. Providers would be allowed to seek informal resolution of the dispute according to the bill's procedures. If the OIG made a final determination of its intent to recoup overpayment from the provider, the provider would receive notice.

The bill would specify that when recoupment was sought for less than $1 million in overpayment, the provider would have the option of seeking an administrative hearing with HHSC's appeals division or SOAH.

When recoupment was sought for $1 million or more, the provider could request an administrative hearing with SOAH or file a petition to appeal the final determination in a district court in Travis County. If a provider chose the administrative hearing, the provider would not be permitted to appeal in district court any administrative order regarding the recoupment.

If any state agency determined a waiver or federal authorization was necessary to implement any provision in the bill, the agency would be required to request the waiver or authorization and delay implementing that provision until it was granted.

CSSB 1803 would take effect September 1, 2013.

SUPPORTERS SAY:

CSSB 1803 would create transparency and improve due process rights in the OIG's Medicaid fraud investigations and enforcement activities.

The bill would protect providers from overzealous investigations by establishing clear and definitive timelines for the OIG's enforcement proceedings, resulting in a more predictable and shorter investigation process. CSSB 1803 also would require that notice be given to providers outlining the specific basis and supporting evidence for any payment hold or attempt to recoup an overpayment, as well as the administrative and judicial remedies available to the provider.

The bill clearly would define a credible allegation of fraud and require the OIG to review each allegation on a case-by-case basis using HHSC-developed criteria. Further, it would require a medical expert review of each allegation to ensure its validity. The bill also would establish clear appeal rights, making available to providers an informal resolution process, administrative hearing through SOAH or HHSC, or judicial review.

In the 10 years since the OIG was created, its investigations and enforcement activities against provider fraud and abuse have spiked disproportionately during the past two years. CSSB 1803 would offer providers a safeguard against losing their livelihoods over minor errors and encourage participation in the Medicaid program.

OPPONENTS SAY:

CSSB 1803 would limit the independence of the OIG by placing it under HHSC guidance and would substantially weaken it by placing numerous barriers in the way of its ability to efficiently investigate and stop Medicaid fraud.

Under the Patient Protection and Affordable Care Act, the federal government will not reimburse Medicaid claims made after a credible allegation of fraud is detected. By making it much more difficult to impose provider holds, the bill would risk costing the state millions of dollars in federal Medicaid payments.

Including the option for a new trial during the payment hold and recoupment appeals process would lengthen fraud cases by years and would allow bad actors to continue billing the Medicaid system. In the event they were found liable, the state would be required to reimburse the federal government for all Medicaid payments made during the appeals process.

NOTES:

The Legislative Budget Board estimates the bill would have a negative fiscal impact of $1.3 million in general revenue related funds during fiscal 2014-15.

SUBJECT: Regulation and inspection of certain child-care facilities

COMMITTEE: Human Services — favorable, without amendment

VOTE: 6 ayes — Raymond, N. Gonzalez, Klick, Rose, Sanford, Scott Turner

0 nays

3 absent — Fallon, Naishtat, Zerwas

SENATE VOTE: On final passage, April 9 — 31-0

WITNESSES: For — (*Registered, but did not testify:* Laura Blanke, Texas Pediatric Society; Stephanie LeBleu, Texas CASA; Annie Mahoney, Texas Conservative Coalition; Madeline McClure, TexProtects, the Texas Association for the Protection of Children; Stewart Snider, League of Women Voters of Texas)

Against — None

On — Elizabeth Kromrei, Department of Family and Protective Services; (*Registered, but did not testify:* Michele Adams and Lisa Kanne, Department of Family and Protective Services)

BACKGROUND: The Department of Family and Protective Services (DFPS) licenses, certifies, and registers child-care facilities — which includes facilities that provide assessment, care, training, education, custody, treatment, or supervision for a child who is not related by blood, marriage, or adoption to the owner or operator of the facility, for all or part of the 24-hour day.

Definitions. "Day-care center" means a child care facility that provides care at a location other than the residence of the director, owner, or operator of the facility for seven or more children under age 14 for less than 24 hours a day, but at least two hours a day, three or more days a week.

"Group day-care home" means a day-care center that provides care at the residence of the director, owner, or operator.

“Family home” means a home that provides regular care in the caretaker's own residence for not more than six children under age 14, excluding children related to the caretaker, and that provides care after school hours for not more than six additional elementary school children.

“General residential operation” means a child-care facility that provides care for more than 12 children for 24 hours a day, including facilities known as children's homes, halfway houses, residential treatment centers, emergency shelters, and therapeutic camps.

“Residential child-care facility” includes general residential operations, child-placing agencies, foster group homes, foster homes, agency foster group homes, and agency foster homes.

Inspections. DFPS is required under Human Resources Code, sec. 42.044 to inspect all licensed and certified facilities at least once a year and may inspect other facilities or registered family homes as necessary.

Penalties. Under sec. 42.078, Human Resources Code, DFPS can impose an administrative penalty against a licensed, registered or listed facility or family home that violates Ch. 42 of Human Resources Code regulating these entities. In addition, the department can impose an administrative penalty against a residential child-care facility if the facility or controlling person:

- violates a term of an issued license or registration;
- makes a false statement on an application for the issuance of a license or registration or an attachment to the application or in response to a matter under investigation;
- refuses to allow a representative of the department to inspect a book, record, or file required to be maintained by the facility or any part of the facility premises;
- purposefully interferes with the work of a DFPS representative or the enforcement of law governing facility regulation; or
- fails to pay an assessed penalty relating to facility regulation on or before the date the penalty was due.

Administrative penalties or remedies, including but not limited to corrective action plans, probation, and evaluation periods, are required to be imposed when appropriate before monetary penalties.

DIGEST:

SB 427 would allow DFPS to inspect a licensed day-care center or group day-care home biennially instead of annually if the department determined, based on previous inspections, that the facility had a history of substantial compliance with minimum licensing standards. Biennial inspections would be unannounced.

The bill would add residential child-care facilities to the list of facilities and programs required to submit a complete set of fingerprints for background checks for all prospective employees, current employees, the director, owner, or operator, and certain persons 14 and older.

The bill would repeal a subsection of code requiring fingerprinting only for prospective foster or adoptive parents and persons 18 or older and living in the home of a person who applied to be a foster or adoptive parent.

The bill would allow DFPS to impose an administrative sanction against a facility or family home that did not submit fingerprints for a background check. The department could also impose an administrative penalty against a family home or a controlling person of a family home for the same reasons an administrative penalty can be imposed against a residential child-care facility under Human Resources Code, sec. 42.078 in current law.

Under the bill, nonmonetary administrative sanctions would be required to be imposed when appropriate before administrative penalties. The department could impose an administrative penalty without first imposing a nonmonetary administrative sanction on a facility or family home for:

- failing to submit fingerprints;
- knowingly allowing a person to be present in a facility or home without a background and criminal history check or with a problematic background and criminal history check; or
- violating a condition or restriction the department had placed on a person's presence at a facility or family home as part of a pending or approved risk evaluation of the person's background and criminal history or central registry findings.

The bill would require fingerprinting and a criminal history and background check as part of the requirements for issuance and renewal of a child-care administrator's license and a child-placing agency

administrator's license. A person could not serve as a child-care administrator of a general residential operation without a license.

The bill would authorize DFPS to deny, revoke, suspend, or refuse to renew a license for a child-care or child-placing agency administrator for engaging in conduct that made the license holder ineligible for a permit for certain facilities or family homes or employment as a controlling person or service in that capacity in a facility or family home.

The changes in law made by the bill to Human Resources Code, sec. 42.078, relating to penalties and sanctions, would apply only to a violation committed on or after the effective date of the bill.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

SB 427 would strengthen protections to create a safe environment for children in all child-care centers by ensuring that all workers who come into contact with children are properly vetted. The bill would allow child-care centers with a strong history of compliance with licensing standards to be inspected once every two years to allow DFPS to focus its efforts on child-care centers at higher risk. The bill would ensure that child-care centers would always be up to licensing standards by continuing to use unannounced inspections and by adding administrative penalties for those who did not submit to background checks.

Recent cases of child deaths and injuries related to insufficient oversight of child-care facilities highlights the need for this bill. The bill is necessary to make sure criminals are not working in Texas child-care facilities and to ensure that DFPS can identify and take action against bad actors. The bill would provide incentives for all child-care facilities to raise the bar for care and would allow DFPS to use its resources more efficiently where they are most needed.

Requiring annual inspections for all facilities, even those with a history of meeting standards, could result in a higher fiscal note for the bill. The fiscal note for the bill is already included in appropriations under the state budget.

OPPONENTS SAY:

While SB 427 is necessary and a step forward, the bill would not go far enough to ensure that all child-care facilities were inspected regularly to ensure the safety of Texas children. DFPS should continue to inspect all

child-care facilities at least once a year.

NOTES:

The companion bill, HB 1680 by Raymond, was referred to the House Human Services Committee on March 4.

According to the Legislative Budget Board, SB 427 would have a negative fiscal impact of $217,674 through fiscal 2014-15 to cover the costs of fingerprint-based background checks.

SUBJECT: Demolition waste disposal by certain local governments.

COMMITTEE: Environmental Regulation — favorable, without amendment

VOTE: 7 ayes — Harless, Márquez, Isaac, Kacal, E. Thompson, C. Turner, Villalba

0 nays

2 absent — Lewis, Reynolds

SENATE VOTE: On final passage, March 27 — 30-0, on Local and Uncontested Calendar

WITNESSES: For — (*Registered, but did not testify*: Monty Wynn, Texas Municipal League)

Against — None

On — (*Registered, but did not testify*: Earl Lott, Texas Commission on Environmental Quality)

BACKGROUND: SB 1258 by Duncan, enacted by the 82nd Legislature in 2011, required the Texas Commission on Environmental Quality (TCEQ) to adopt rules affecting certain counties and cities with 10,000 or fewer inhabitants. The rules allow the commission to grant permits to local governments to dispose of waste from demolished abandoned homes below ground on city or county land that would qualify for an arid exemption for solid waste disposal. Six communities have applied for and received permits from TCEQ to dispose of demolition material in this manner.

The arid exemption is an exemption from certain landfill requirements in areas of the state where annual precipitation averages 25 inches or less for the most recent 30-year reporting period, based on data from the nearest official recording station.

DIGEST: SB 819 would amend Health and Safety Code, sec. 361.126, to change the population limit from 10,000 or less to 12,000 or less for certain counties and cities wishing to dispose of demolished abandoned housing outside of

a permitted landfill.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

SB 819 would allow more communities in arid parts of the state to access TCEQ's program to dispose of abandoned and nuisance structures in an economical manner that also protects the environment. The TCEQ program incorporates environmental safeguards, such as the protection of groundwater and the safe disposal of asbestos. The bill simply would raise the population cap so that additional cities and counties would be eligible to dispose of demolition waste under the program.

Disposing of a demolished abandoned building in a landfill can cost upwards of $50,000, an expense that many small communities cannot afford. Abandoned structures are eyesores and pose health and safety concerns. They attract rodents and create public safety dangers from fire and building collapse.

OPPONENTS SAY:

The Legislature should ensure that any recyclable material had been removed before a building was demolished, and that communities considered deconstruction, which involves the removal of usable materials, such as lumber and working fixtures, prior to demolition. Toxic material, such as thermostats containing mercury, should be removed from the building before demolition.

SUBJECT: Banning public-private partnerships within the Capitol complex

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 10 ayes — Cook, Giddings, Craddick, Farrar, Frullo, Geren, Harless, Menéndez, Oliveira, Sylvester Turner

0 nays

3 absent — Hilderbran, Huberty, Smithee

SENATE VOTE: On final passage, April 4 — 30-0

WITNESSES: For — (*Registered, but did not testify*: David Lancaster, Texas Society of Architects)

Against — None

BACKGROUND: In 2011, the 82nd Legislature enacted SB 1048 by Jackson — the Public and Private Facilities and Infrastructure Act (P3 Act) — which allows governmental entities to enter into comprehensive agreements with private parties. As part of the act, Government Code, sec. 2267.053 enables private industry to submit proposals for development on government-owned land.

Government Code, ch. 2165 directs the Texas Facilities Commission to manage the state's public buildings, grounds, and property.

Under Natural Resources Code, ch. 31, certain state lands, such as land owned by state universities, are exempted from the General Land Office's oversight in making recommendations regarding state lands.

DIGEST: CSSB 894 would amend the P3 Act to prohibit the use of public-private partnerships (P3s) within the Capitol complex. The bill also would amend Government Code, ch. 2165 to prohibit the Texas Facilities Commission from leasing or selling real property within the Capitol Complex. The commission still would have authority to enter into certain leases, such as leasing space in state office buildings and parking garages.

The bill would amend Natural Resources Code, ch. 31 so that the General Land Office would no longer be responsible for making recommendations regarding real property within the Capitol complex.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

SB 894 would protect the Capitol complex by banning the use of P3s on these state lands. During Sunset review of the Texas Facilities Commission and other hearings, it appeared the commission was on a path to commercialize the Capitol complex with proposed private- partnership developments. The Capitol complex is sacred and should be preserved for all Texans, not bid out to private developers.

OPPONENTS SAY:

The Capitol complex is the most valuable land Texas owns. While unsolicited P3 proposals should not be used to develop this land, the Capitol grounds could still be protected without taking P3s completely off the table. The bill should only ban the use of unsolicited P3 proposals on the Capitol grounds, which would leave the state the option of pursuing a solicited proposal based on thorough master planning with the approval of all stakeholders.

NOTES:

SB 507 by Watson, a related bill requiring that only solicited P3 proposals be allowed for the Capitol Complex and instituting a two-year moratorium on P3 projects within the complex, passed the Senate by 30-0 on April 4. The House Economic and Small Business Development Committee reported SB 507 favorably as substituted on May 8.

SUBJECT: Criminal history checks for employees in hospital mental health units

COMMITTEE: Public Health — favorable, without amendment

VOTE: 9 ayes — Kolkhorst, Naishtat, Collier, Cortez, S. Davis, Guerra, S. King, J.D. Sheffield, Zedler

0 nays

2 absent — Coleman, Laubenberg

SENATE VOTE: On final passage, March 21 — 31 - 0

WITNESSES: For — (*Registered, but did not testify*: Stacy Wilson, Texas Hospital Association)

Against — None

On — (*Registered, but did not testify*: Patrick Waldron, Texas Department of State Health Services)

BACKGROUND: Health and Safety Code, ch. 250 governs the nurse aid registry and requires criminal history checks for employees and applicants for employment in certain facilities serving the elderly, persons with disabilities, and persons with terminal illnesses.

DIGEST: SB 944 would include mental health service units of hospitals licensed under the Texas Hospital Licensing Law among the facilities governed by Health and Safety Code, ch. 250 and required to conduct criminal history checks on employees and applicants.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY: SB 944 would help protect mental health patients by improving employment screenings of individuals working in mental health units of hospitals. Currently, licensed caregivers such as doctors and nurses are

subject to criminal background checks, but other employees at a hospital's mental health unit may not be. This poses a threat to patients because mental health patients can be particularly vulnerable and susceptible to abuse. Applicants for employment in other facilities with similarly vulnerable populations, including nursing homes, adult day care facilities, and other mental health facilities, already undergo this screening process.

Allegations of unlicensed employees abusing patients at a mental health unit in a hospital raised awareness that these employees were not screened to the same standard as employees for other similar medical institutions. SB 944 would help protect vulnerable mental health patients by bringing the same employment screening process that exists in other similar facilities to mental health units in hospitals.

OPPONENTS SAY:

No apparent opposition.

SUBJECT: Construction or rehabilitation of certain hotel projects

COMMITTEE: Economic and Small Business Development — favorable, without amendment

VOTE: 8 ayes — J. Davis, Vo, Bell, Isaac, Murphy, Perez, E. Rodriguez, Workman

0 nays

1 absent — Y. Davis

SENATE VOTE: On final passage, April 29 — 31-0

WITNESSES: No public hearing

BACKGROUND: Under Government Code, sec. 2303.5055, a municipality with a population of 1.5 million or more may agree to use hotel occupancy taxes to guarantee the bonds of a local city corporation that were issued to pay for the construction, remodeling, or rehabilitation of a qualified hotel project. The eligible time period for using hotel occupancy taxes for this purpose is no more than 10 years. A qualified hotel project is defined as a hotel proposed by a city to be constructed within 1,000 feet of a convention center owned by a city with a population of more than 1.5 million.

Tax Code, ch. 351 authorizes a city to impose a hotel occupancy tax. A city of 1.5 million or more may pledge the revenue derived from hotel occupancy taxes for the payment of bonds issued to pay the cost of construction, remodeling, or rehabilitation of a hotel within 1,000 feet of a convention center or historic hotel within one mile of the convention center. This pledge may only be the portion of the tax collected at the hotel serving as the basis for the project.

In addition, the Tax Code authorizes the comptroller to make a refund to a qualified hotel project of the sales-and-use taxes collected by the qualified hotel project during its first 10 years of operation.

DIGEST:

SB 1719 would amend Government Code, sec. 2303.5055 to also apply to a city with a population more than 500,000 that borders Mexico (El Paso). A city meeting this description could guarantee a bond issued to pay for the construction, remodeling, or rehabilitation of a qualified hotel project. The definition of a qualified hotel project would be expanded to apply to a city of this size and include hotel projects within 3,000 feet of such a city's convention center.

Tax Code, ch. 351 would be amended to also apply to pledges of hotel occupancy tax revenue by a city bordering Mexico with a population over 500,000. For a city of this size, an authorized use of the bond money would be for a hotel project within 3,000 feet of the city's convention center.

Under the bill, cities with population of more than 500,000 and bordering Mexico would not be eligible for a sales-and-use tax refund from the comptroller for qualified hotel projects.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

The bill would allow El Paso to incentivize the construction or rehabilitation of hotel projects near its convention center. Currently, larger cities have access to this economic development tool. The Houston City Council, for example, approved in December 2012 a $138 million development package to spur the construction of a 1,000-room Marriott Marquis near its downtown convention center. Currently in El Paso, only a handful of hotels are located in the downtown area, where the convention center is located.

More hotel rooms in El Paso will be needed in the future. El Pasoans recently approved $470 million in quality-of-life improvements. This along with activities already being undertaken at the convention center and the construction of a new baseball park are expected to bring an influx of visitors to the area. The bill would enable the City of El Paso to incentivize more economic development within 3,000 feet of its convention center by allowing new hotel projects or hotel renovations to use the revenue they generate once they become operational to help pay for capital costs involved in their construction and or renovation.

OPPONENTS SAY: No apparent opposition.

SUBJECT: Prohibiting landlords from requiring longer leases after natural disasters

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 5 ayes — Oliveira, Bohac, E. Rodriguez, Villalba, Walle

2 nays — Orr, Workman

SENATE VOTE: On final passage, April 10 — 30-1 (Hegar)

WITNESSES: For — David Mintz, Texas Apartment Association; (*Registered, but did not testify:* Emily Rickers, Alliance for Texas Families)

Against — None

DIGEST: SB 1120 would prohibit a landlord from forcing a tenant to sign a longer lease term if the landlord allowed the tenant to move from one rental property rendered unusable by a natural disaster to another property owned by the same landlord.

The bill would take effect January 1, 2014, and would apply only to leases executed or renewed on or after that date.

SUPPORTERS SAY: SB 1120 would protect Texans who lost their homes in natural disasters from the unscrupulous practices of certain landlords who have taken advantage of these situations to require tenants to sign longer leases. In the wake of the 2012 tornado in Lancaster, just south of Dallas, many homes were destroyed, and some renters living in apartments were displaced. Renters in some Lancaster apartment units found they could not move to another unit managed by the same apartment management company without signing a lease extending the rental period to which they had agreed for the original unit. This practice is extremely unfair to vulnerable citizens in need of immediate assistance, especially those who have no alternative housing options, and SB 1120 would put a stop to it.

The bill would not preclude the landlord and tenant from renegotiating the lease at a later date. Nor would the bill prevent the landlord and the tenant from renegotiating the lease at the time of the tenant's move into the new

unit, as long as the renegotiation was voluntary. The bill only would prevent landlords from leveraging their power over vulnerable tenants to force them into a long-term agreement when few other options were available.

Delaying the bill's effective date until January 1, 2014, would allow lease agreements to be updated to include language notifying tenants of the protection offered by SB 1120.

OPPONENTS SAY:

SB 1120 would be unfair to landlords. If the landlord offered to move a tenant into another apartment, the tenant should take whatever conditions accompany that offer because the landlord is under no obligation to make the offer. In addition, there could be costs associated with making another apartment available for the displaced tenant. Extending the lease is a fair way for landlords to recoup these costs.

OTHER OPPONENTS SAY:

The bill could lead to unintended consequences. If a landlord were considering offering another property, the bill could forestall negotiations between the landlord and the displaced tenant if part of the deal included an extended lease. SB 1120 could therefore present a disincentive to landlords who might otherwise offer another property to the tenant.

SUBJECT: Allowing multiple county assistance districts per commissioners' precinct

COMMITTEE: County Affairs — favorable, without amendment

VOTE: 6 ayes — Coleman, Farias, Hunter, Kolkhorst, Krause, Stickland

1 nays — Simpson

2 absent — M. González, Hernandez Luna

SENATE VOTE: On final passage, April 25 — 30-0, on the Local and Uncontested Calendar

WITNESSES: (*On the companion bill, HB 3795:*)
For — Trey Lary, Fort Bend County; Donald Lee, Texas Conference of Urban Counties; (*Registered, but did not testify:* Maricela De Leon, Fort Bend County; Jim Short, Fort Bend County)

Against — None

BACKGROUND: Local Government Code, ch. 387 establishes rules and regulations governing county assistance districts (CADs). A county commissioners court is empowered to call an election to create a CAD and levy a sales and use tax to:

- build, maintain, and improve roads;
- provide law enforcement and detention services;
- maintain and improve libraries, parks, museums, and other recreational facilities;
- provide services beneficial to public safety and health, including fire control and prevention; or
- promote economic development and tourism.

More than one county assistance district may be created in a county, but not more than one district may be created in a commissioners' precinct.

DIGEST: SB 1167 would delete a provision limiting county assistance districts to no more than one per county commissioners' precinct.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

SB 1167 is necessary to correct an arbitrary and unnecessary restriction on county assistance districts. CADs are generally established in unincorporated areas with a need for basic public services, such as roads and traffic enforcement. A bill enacted by the 82nd Legislature in 2011 revised provisions governing CADs in a way that the authors did not envision, with the effect that only one district may be created per precinct.

Special districts, and CADs in particular, are necessary because often they are the only way for residents to finance core public services that benefit everyone. The prohibition in current law has, in at least one instance, interfered with plans for a CAD. CADs must be established through a majority vote of the residents affected, and residents should be able to decide for themselves how to provide basic government services.

There is broad agreement and little controversy in the 83rd Legislature about the need to remove this restriction on the number of CADs that may be established in a county commissioners' precinct. SB 1167 passed the Senate on the Local and Uncontested Calendar. The House companion bill, HB 3795 by Coleman, passed the House on the Local, Consent, and Resolutions Calendar, and has been recommended for the Local and Uncontested Calendar by the Senate Intergovernmental Relations Committee.

OPPONENTS SAY:

There is already a great abundance of special districts and taxing entities in the state. Removing the maximum requirement of one CAD per precinct would further increase the number of these districts around the state. CADs have taxing authority and they can be established to finance a wide range of projects. Standing by principles of limited government requires pulling in the reins on tax-and-spend authority at all levels.

SUBJECT: Establishing a school safety certification program and task force

COMMITTEE: Homeland Security and Public Safety — committee substitute recommended

VOTE: 6 ayes — Pickett, Fletcher, Cortez, Dale, Flynn, Simmons

0 nays

3 absent — Kleinschmidt, Lavender, Sheets

SENATE VOTE: On final passage, April 25 — 30–0 on Local and Uncontested Calendar

WITNESSES: (*On House companion bill, HB 3655*)
For — (*Registered, but did not testify:* Ellen Arnold, Texas PTA; Jennifer Canaday, Association of Texas Professional Educators; Patty Quinzi, Texas AFT)

Against — None

On — Steven McCraw, Department of Public Safety; Tom Shehan, Texas A&M Engineering Extension Service

BACKGROUND: Education Code, sec. 37.108 requires school districts and public junior college districts to adopt and implement a multi-hazard emergency operations plan for the district's facilities. The plan must address mitigation, preparedness, response, and recovery and must provide for employee training, mandatory school drills; coordination with the Department of State Health Services and local emergency management, law enforcement, health departments, and fire departments.

The plan also requires a safety and security audit at least once every three years, with results reported to the district's board of trustees and the Texas School Safety Center at Texas State University-San Marcos. The center was created in 1999 and authorized by the Legislature in 2001 to serve as a central location for school safety information.

DIGEST: CSSB 1556 would establish the School Safety Task Force to study best

practices for school multi-hazard emergency operations planning and make recommendations to the Legislature, the Texas School Safety Center, and the governor's Texas Homeland Security office.

The task force would be comprised of:

- the chief of the Texas Division of Emergency Management or a designee;
- the training director of the Advanced Law Enforcement Rapid Response Training Center at Texas State University-San Marcos or a designee;
- the chairperson of the School Safety Center or a designee; and
- the agency director of the Texas A&M Engineering Extension Service or a designee.

The chief of the emergency management division or the chief's designee would serve as presiding officer of the task force. The task force would be required to submit a report to the Legislature by September 1 of each even-numbered year.

The task force would consider recommendations from school district and school personnel, including school safety personnel and educators, and from first responders, emergency managers, local officials, nonprofit organization representatives, and other interested parties with knowledge and experience concerning school emergency operations planning.

CSSB 1556 also would require the center to establish a school safety certification program in consultation with the task force. Schools would be eligible for the certificate if they adopt and implement a multi-hazard plan as required under sec. 37.108 that includes:

- measures for security of facilities and grounds;
- measures for communication with parents and the media in event of an emergency;
- an outline of safety training for school employees;
- self-reporting by districts that they have conducted separate, annual drills for a school lockdown, an evacuation, a weather-related emergency, a reverse evacuation; and a shelter-in-place event.

The task force could set other eligibility criteria for the certificate.

The bill would repeal a statutory provision requiring the center to develop security criteria that districts could consider in designing schools, and instead require districts to consider security criteria when planning new schools or major renovations.

The bill would take immediate effect if passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

In light of the December 2012 Connecticut school shooting, the state of Texas needs to evaluate current school safety practices to ensure students and staff are prepared to react in emergency situations. CSSB 1556 would use the existing resources of the Texas School Safety Center and the Division of Emergency Management to help districts improve their security plans.

The bill would create a task force to study the most effective safety measures and make recommendations to the Legislature for statutory changes to better protect students and educators. The task force members could be reimbursed their expenses.

The center currently collects school safety data from around the state and provides information and some training, but there is no coordination with other entities that are capable of providing safety training such as the Division of Emergency Management and the Texas A&M Engineering Extension Service's “Disaster City” training facility. The task force would bring together those and other experts.

The bill also would create a certification program that could compel districts to take extra steps to become certified as a safe school. After the shooting at Sandy Hook Elementary School, the Texas attorney general called on all districts to submit their safety audits. The center reported that of the 1,025 school districts required by law to submit safety audits, 38 did not do so and another 40 reported but did not meet full compliance. CSSB 1556 would encourage compliance with existing law by linking the safety audits to certification.

OPPONENTS SAY:

No apparent opposition.

NOTES:

The House companion bill, HB 3655 by J. Davis, was reported favorably as substituted by the House Homeland Security & Public Safety Committee on April 26.

Compared with the Senate-passed version, the committee substitute would add the school safety certification program.